What is Environmental Justice?
New Hampshire lacks environmental justice statute

By Scott Merrill

In an age of racial-justice reckoning and political attention on social inequities, environmental justice advocates are hoping to strengthen laws and build community support.

But in New Hampshire, environmental justice statutes that protect vulnerable groups of people burdened by the effects of development, or those lacking environmental benefits such as greenspace or clean air, do not exist.

The concept of environmental justice emerged in the United States in the 1980s and has two distinct uses. The more common usage refers to a social movement by which fairness is addressed regarding environmental burdens and benefits. The other use refers to an interdisciplinary body of social science literature that includes theories of the environment and justice, environmental laws and their implementations, as well as environmental policy and planning, and governance for development and sustainability.

Seeing environmental burdens first hand

Semra Aytur, Associate Professor in the Dept. of Health Management and Policy at the University of New Hampshire, says she wasn’t aware of environmental justice until studying with Professor Steven Wing in graduate school at the University of North Carolina in the early 2000s.

“I didn’t know what environmental justice was until I was able to meet Doctor Wing and see these issues in real life.”

Today, Aytur, an epidemiologist by training, considers environmental justice to be her favorite and most important public health issue.

Professor Wing, who died in 2016, specialized in public health and occupational safety. It was his research on Concentrated Animal Feeding Operations (CAFOs) that opened Aytur’s eyes to the intersections between public health, race, wealth equity, and the environment.

“He was one of the first academics to work with an environmental justice group called the Concerned Citizens of Tillery in North Carolina,” Aytur said.

The Burdens of Heat

By Kathie Ragsdale, Scott Merrill and Johnny Bassett

The biological effects that heat have on the human body are universal and indisputable. Hyperthermia – too much heat over a certain amount of time – can lead to heat exhaustion, heat stroke, and even death.

And like other social problems today – such as the lack of affordable housing or access to healthy foods – not everyone suffers equally when it comes to the effects of heat. Those with diabetes, heart disease, other comorbidities, the elderly, people of color, and the poor, suffer at higher rates.

In New Hampshire, a state with thousands of acres of forests, many people – especially in urban areas – continue to lack access to something as simple as the health benefit of shade.

Heat, one of the most pressing environmental justice issues

Environmental justice advocates, along with public health specialists, lawyers, and community organizers, are currently working to educate and assist the public about the dangers of heat-related stress and illness in New Hampshire and they’re seeking solutions that involve empowering communities. (See article: “What is Environmental Justice.”)

Of all the environmental justice issues being confronted today, UNH Professor of Health Management and Policy Semra Aytur, cited heat-related stress, especially for people of color and those with comorbidities, as one of the biggest.

“Heat, and the related illnesses that come with it, is a fundamentally important environmental justice issue,” Aytur said, “because it spans various aspects within communities.”

As well as teaching and conducting research, Aytur works with the Conservation Law Foundation on environmental justice with the goal of helping to create healthy communities. Vice President and Director of CLF in N.H., Tom Irwin, said his organization has been committed in the past year to building an environmental advocacy community in Manchester and has hired a part-time organizer who is currently working on a campaign to increase green spaces around the city of Manchester.

“Communities of color suffer disproportionately from the impacts of climate change,” Irwin said. “And the health impacts of heat are often lost on people. We see it in the news everyday now. Flooding problems, fire, drought, those very dramatic impacts of climate change. But heat itself is the weather event with the greatest impact. It kills more people than all of the other environmental justice issues.”

Irwin referred to the European heat wave that killed 70,000 across Europe and 14,802 people in France in 2003, but also spoke about rising average temperatures across the world that disproportionately affect vulnerable populations.

Looking at the number of extreme heat days in July and August in Concord from 1954-2018 reveals a series of peaks and valleys, as well as a steady rise, with the highest heat days recorded in the summers of 1975.

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PRACTITIONER PROFILE

From Ice Rinks to Law Offices
Attorney Gregory A. Moffett

By Kathie Ragsdale

Concord-based attorney Gregory A. Moffett knows a thing or two about winning and losing.

A director in the firm of Preti Flaherty, Moffett is a former pro hockey player who has experienced both the winner’s high and loser’s lows that come with high-powered athletic competition.

With a practice focused on bankruptcy, creditors’ rights, commercial law, and litigation, he has also been involved in some of the state’s largest Chapter 11 cases, with successes that have brought both satisfaction and perspective.

“As a bankruptcy and insolvency person, you’re seeing the end of an economic life,” he

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THE DOCKET

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Phones for you. NHBA Information Technology Coordinator, Hank Plaisted, describes the bar’s recent transition to a new phone system and offers helpful info and advice. PAGE 14

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Workers’ Compensation and Personal Injury Law

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The nuances of workers’ comp statutes; reimbursing injured workers for cost of medical marijuana; compensation for vaccine injuries; and more.

Courts. The National Council of Juvenile and Family Court Judges named Judge Davis King as its 2021 Innovator of the Year. PAGE 38
The Age of Uncertainty

We just experienced the biggest change in the practice of law in my career. In February of 2020, I was in court in-person five to 10 times a week. In that same month, I had a “normal” jury trial – a few hours of jury selection, a few days of trial, and then a verdict. Then came Covid. Nothing has been the same since. Over the next 16 months, I had less than a dozen in-person hearings. Every other hearing was virtual, usually Webex or Zoom, including contested evidentiary hearings and an oral argument at the First Circuit. Many cases were rescheduled, and rescheduled again, on the hope that we would get back to “normal” eventually.

This change did not affect us all the same way. Not going to court was disorienting and unsettling for me. Maybe that was good, maybe bad, maybe some of both, but it was not comfortable, at least not for me. I found myself missing the action of being in court. When I finally had a jury trial and some other major proceedings in-person in July, it was not stressful, it was a relief just to be back in court again. But many lawyers had a different reaction. Some lawyers told me they welcomed the change. The pandemic, terrible as it has been, caused them to examine their practice. They found out that they wanted, and might be able to have, a different kind of practice; and they discovered they might be able to make a change for the better.

Now, as I am writing, the “delta-variant” is surging around the country and there is talk of bringing back mask requirements and other protocols. So, even as we reopen the courts and return to in-person hearings, individual judges are being given discretion to adopt protocols based on county-by-county differences because we just don’t know what we will be facing.

Whatever happens, it seems unlikely that things will be the same as they were before. The virtual practice of law has gotten a foothold and does not appear to be going away. We need to be ready to use technology because we do not know what the future will bring. Also, we learned that there are a lot of upsides to a virtual practice. We all learned how to use Webex, Zoom, and other platforms, and we use them daily. We recognize that sometimes the virtual version of an event can be better than the in-person version. Virtual is usually easier, cheaper, and faster. Some think the quality of justice might even be improved. One judge has said, very convincingly, that witness credibility is easier to judge virtually because the view of the witness’s face is better online than it is from the bench. Having discovered these new tools, we should use them, as it appears the courts will allow us to do on request for certain types of proceedings.

On the other hand, a lot of lawyers, myself included, hope that we do not need to use virtual hearings other than for non-controversial matters to save time. In my area of practice – criminal trials – a recent and very thorough study from the Stanford Criminal Justice Center highlighted some of the problems.

Virtual Justice? A National Study

Analyzing the Transition to Remote Criminal Court, included responses from 240 criminal defense attorneys from three diverse jurisdictions. Two-thirds of the respondents believed that the shift to virtual proceedings hurt client communications and three-fourths agreed or strongly agreed that the shift to virtual proceedings has compromised access to justice. When the same study went beyond defense attorneys to include judges, prosecutors, and others, the group expressed a preference for the efficiency of virtual hearings for uncontested and non-evidentiary hearings but not for other matters. The group concluded that virtual technology “operated negatively, resulting in an intangible loss, fewer nonverbal cues, a reduced ability to communicate, or a dampening of emotional connections.” That latter point was echoed by one of my clients in 2020, who, upon being asked to consent to a virtual hearing, responded, “What, do they wanna podcast me into prison?”

So, we were not all affected the same and we don’t know for sure what will happen in the future. We are all waiting to see...

Pro Bono is Good For Business*

By George Moore
NHBA Executive Director

Last week, in his first president’s column, Richard Guerriero dedicated his subject to the proposition that pro bono service should be an ethical and moral priority for lawyers practicing law. Not just litigation, but any type of law. For anyone watching, it’s also quite clear that the New Hampshire Supreme Court is placing renewed emphasis on lawyers satisfying their Rule 6.1 obligations to give something back through pro bono service. I am writing this article to make the case that pro bono participation is good for business, both for individual lawyers and law firms. And it is good for maintaining a high level of visibility and excellence in practice.

The practice of law is a hectic and stressful occupation. We all struggle with trying to meet deadlines and deal with the demands of clients and the court system. Some of us do it better than others. Knowing this is the reality, where is the time there to give away billable hours in representing a pro bono client? Many lawyers, and firms, come to the simplistic conclusion that pro bono service cannot be part of a successful business model. As Richard points out, there’s no money in it. However, successful law firms need to have lawyers who are fully engaged in their practice and feel a sense of worth in what they’re doing. Happy employees tend to have far less burnout, depression, and substance abuse. For those lawyers who take pro bono cases, they will tell you that those cases are a refreshing change.

MOORE continued on page 9

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By Richard Guerriero
Lothstein Guerriero, Concord, NH

President’s Perspective

Bar Governance
**Why and How to Make Your Daily Life a Little Better: Mindfulness 101**

*This article first appeared in the May, 2021, issue of the Oregon State Bar Bulletin. It appeared as the first of a two-part series on techniques that legal professionals can use to help reduce stress.*

**By John Devlin**

Why did you decide to read this article? Perhaps you’ve heard about mindfulness, but you don’t really know what it is. Maybe you’ve given mindfulness a shot in the past, but you didn’t stick with it. Regardless of how you got to this point, you’re here now. That means you have some level of curiosity about the concept.

Let’s start by taking a few deep breaths. No, really. I want you to take some deep breaths before continuing to read. Breathe in slowly, then exhale slowly. Do that three times. You just did a mindfulness exercise. You didn’t need a special cushion; you didn’t need to be in a designated place. You didn’t need any particular objects (candles, incense, etc.). You just needed your breath and your intention.

I hope that short exercise made you feel a little better than you did before reading it. I want to introduce you to mindfulness techniques that can improve your daily life. My hope is that these techniques will be more accessible than you might think.

First, a confession. Before I started my mindfulness practice in the fall of 2019, I was highly skeptical. Several years earlier, I reluctantly participated in a guided meditation exercise during a meeting. Let’s just say that my inner lawyer voice was full of snark during that session. Little did I know that I would be shopping for a meditation cushion a few years later.

**What is Mindfulness?**

Jon Kabat-Zinn, one of the pioneers of the mindfulness movement, defines mindfulness as “awareness that arises through paying attention, on purpose, in the present moment, non-judgmentally.” Take a minute and read that sentence again, focusing on each of the key words or phrases — paying attention, on purpose, in the present moment, non-judgmentally. Each of those words or phrases describes a different aspect of mindfulness.

One way to think about mindfulness is to imagine its opposite — mindlessness. Think about driving somewhere familiar and realizing that you have no memory of how you got there, or eating a meal while doing something else and realizing that you have not tasted the food. We often go through the present moment on autopilot while our mind is elsewhere. Mindfulness is a focused effort to keep our attention in the present moment.

To keep it simple, I have broken down mindfulness into two essential techniques: daily meditation and being present in everyday life. Before we dive into those techniques, though, I think a brief science lesson might be helpful.

**The Science of Mindfulness**

There is growing evidence that mindfulness can affect the structure of your brain in positive ways. Dr. Sara Lazar, a professor at Harvard Medical School, has demonstrated that a consistent mindfulness practice correlates with an increase in the hippocampus (which helps learning, memory and emotional regulation) and the temporoparietal junction (which helps cognition, perception and compassion), and a decrease in the amygdala (which manages our fight, flight or freeze system). These changes are a result of neuroplasticity — the concept that our brains continue to change over the course of our lives.

Mindfulness is a way to intentionally make those changes.

While much of this research is in its early stages, there is widespread consensus that developing a mindfulness practice can have a positive impact on a person’s daily life. Some of the main benefits are a reduction in stress, anxiety and irritability, along with an increase in relaxation, connection and focus.

Mindfulness can be as simple as walking your dog, attorney John Devlin says. He’s learned to notice the sounds around him, the objects he passes and the feel of his steps on the ground. Photo courtesy of John Devlin

The great news is that meditating for a relatively short period of time (10-20 minutes) appears to be enough to produce those benefits. But there’s a catch: The key to neuroplasticity is consistency, so it’s ideal to have a daily practice.

If you research the benefits of mindfulness, you quickly will discover that there are claims about its ability to help with a wide variety of health problems. Some of the research also suggests that mindfulness can slow down the brain’s aging process. While those claims are speculative, I think it’s fair to say that, like a lot of brain science, the research into the power of mindfulness is in its infancy. We don’t understand all of the ways in which mindfulness impacts our bodies and our lives, but we’re pretty sure that it makes those things better.

**Specific Needs of the Legal Profession**

While mindfulness can improve any-one’s life, the specific challenges of practicing law line up nicely with the benefits that mindfulness can provide.

Most people reading this article have heard about the fact that lawyers have high rates of alcoholism and substance-use disorders. In 2016, the Journal of Addiction Medicine published an article entitled “The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys.” The researchers surveyed almost 15,000 lawyers across the country and discovered that more than one-third of those lawyers reported behavior consistent with hazardous drinking or possible alcohol abuse or dependence. One out of every five lawyers scored high enough to be classified as a problem drinker.

What is less commonly talked about, and far more widespread, are other mental health concerns identified by the researchers: 61 percent of the lawyers surveyed reported a concern about anxiety, and 45 percent reported a concern about depression.

These numbers become even more staggering when put into a larger context. All of those percentages are far higher in lawyers, it turns out, than in the general population.

There are various aspects of lawyers’ work — conflict, deadlines, financial pres-

**Kristine LaCharite New Receptionist**

Kristine LaCharite is the NHBA’s new receptionist. She has over 10 years front desk experience and was formerly with The Birches at Concord.

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**New Hampshire Lawyers Assistance Program is here for those who are struggling with alcohol or drug abuse, depression, anxiety and stress, as well as other addictions and mental health issues.**

**Wellness Corner**

The New Hampshire Lawyers Assistance Program is here for those who are struggling with alcohol or drug abuse, depression, anxiety and stress, as well as other addictions and mental health issues.
By John Cunningham

Eric Grossman, the chief legal officer of Morgan Stanley, the billion-dollar global investment bank, recently sent a letter to all lawyers working for his company, advising them that Morgan Stanley would no longer use the services of any of these firms if any of their lawyers worked remotely. His reasoning was, apparently, that these firms could not do effective mentoring of their younger lawyers or maintain adequate inter-lawyer collegiality.

Should New Hampshire lawyers work remotely? The question is immensely complex, and the answer will undoubtedly vary greatly from law firm to law firm. But it is also a critically important question, not only for lawyers but also for non-lawyers. Below are some guidelines I propose for answering the question as relevant to New Hampshire lawyers. However, I hope these guidelines will be useful not only for lawyers but also for non-lawyers who read this column.

- Obviously, as long as the COVID pandemic continues, law firms that require or permit their lawyers to work in their offices should ensure full compliance by everyone in their offices, whether lawyers, staff, or clients, with applicable public health guidelines. This applies especially to the compliance necessary to protect lawyers and staff from the Delta variant, which may be a serious threat for a long time.
- Equally obviously, lawyers who because of age, comorbidities or other factors may face significant COVID risks if they work in the offices of their law firms should not be required by their firms to do so.
- Many law firms may share the above Morgan Stanley beliefs. But many of them may conclude that they will suffer no significant loss of collegiality or effectiveness as long as, for example, the lawyers in their firms, whether new or experienced, work there only for, say, two or three days a week.
- Many lawyers who are members of multi-lawyer law firms and who have worked remotely during the pandemic may feel on the basis of this experience that they can work at least as efficiently at home as their firms’ offices, and many of these lawyers may also feel that working at home provides major non-professional benefits, including better family life and the avoidance of lengthy commutes, that work in their firms’ offices cannot provide. Law firms should honor the beliefs of these lawyers.
- If law firms believe that any of their clients may expect all of their lawyers to work in their firms’ offices and to meet with these clients in person at these offices rather than by Zoom, this belief may leave these firms with no choice but to require all of their lawyers to work in the firm’s offices. This will presumably be the case with law firms that work for Morgan Stanley. But my guess is that no New Hampshire clients are likely to have these expectations.

A final consideration, based on my own personal experience as a lawyer working at home throughout the pandemic, is that I found that, for reasons of convenience or otherwise, most or all of my clients, including new ones, greatly prefer to meet with me by Zoom rather than at my office and couldn’t care less whether I work at home or in an office. I suspect that many lawyers and non-lawyers and their clients and customers who read this column will share this view.

I went back to read the paper trail related to Atty. Gregory Song’s letter in the July Bar News. The several letters back and forth (his response to Atty. Colleen’s, which was responding to Atty. Richards-Sower’s) is in part a classic case of “where you stand depends on where you set it.” That said, some of the language of both of these commentators, something I hope to avoid here.

First, I don’t think it is fair for Atty. Song to say that because Derek Chauvin was suspended as a police officer, then implicated quickly after killing George Floyd, there was nothing to protest about Floyd’s murder. Chauvin engaged in horrific conduct which was excruciating to watch on video. Floyd is one of many Black men who unfortunately and unnecessarily has been killed by officers.

I don’t say this lightly – I spent many years defending police and corrections officers in excessive force and similar cases. Floyd’s case was one of many in which persons of color met with death or grievous bodily harm. That Chauvin felt he could snuff out Floyd’s life in broad daylight, knowing he was being videoed, says volumes. But more importantly, the murder of George Floyd was just one of many of its kind.

Second, both Song and Gillespie paint with a very broad brush when writing about BLM. Yes, some of the BLM protests got out of control. Yes, some of them included violence, looting and property destruction. My impression was that many, if not most, of the protests were intended to convey that people were fed up with Black men and women being killed or harmed by excessive force from police. I don’t condone the violence, looting and destruction. Those directly responsible for illegal actions should have been prosecuted.

Third, even those BLM protests that got out of control do not compare to the January 6 insurrection at the Capitol. This is so even for those persons who went to BLM protests for bad purposes, which I think was likely a small number of those who attended. The January 6 attack was an attempt to overthrow the lawful presidential election. The January 6 invasion of the Capitol was a direct assault on our democracy. Even the takeover of the area around the Portland, Oregon federal building just doesn’t compare. I am not saying everyone who went to protest at the Capitol was bad. Many were law-abiding citizens exercising their 1st Amendment rights. But the fact that over sixty (60) courts, including courts with Republican and Trump-appointed judges, rejected every challenge to that election is an excellent measure of the validity of the election.

Fourth, as for January 6, for those people who still believe the big lie, or somehow think that the lie justifies breaking into the Capitol on January 6, I will never be able to convince you that the election was fair. But the fact that over sixty (60) courts, including courts with Republican and Trump-appointed judges, rejected every challenge to that election is an excellent measure of the validity of the election.

Corey Belobrow

Law in the Marketplace: Should lawyers work remotely?

By John E. Friberg Sr.

Dear Bar Members:

It ended like a whisper, when it should have ended to thunderous applause. The retirement of one of New Hampshire’s all-time great trial lawyers passed without notice or comment – sadly, yet laudably, exactly the way he would want it to be. As Jefrey Lebowski, more prominently known as The Dude, once said: “This will not happen. Let’s make jury trials easier.”

A Tribute to John E. Friberg

John E. Friberg Sr.

NEW HAMPSHIRE BAR NEWS

Opinions

NEW HAMPSHIRE BAR NEWS

Law in the Marketplace: Should lawyers work remotely?

By John Cunningham

The next major hurdle is the wait for trial. If the litigant has timely demanded a jury trial, when the trial date finally arrives, it will require a jury of 12 and a unanimous verdict. The process is time consuming, cumbersome and expensive.

Here’s the insider tip: Nothing gets and keeps cases moving to final resolution like close judicial supervision and a firm trial date.

So, let’s make jury trials easier, earlier, less cumbersome and less expensive with this rule change.

“Superior Court Rule 38(a): In all civil actions a jury shall consist of 6 members. The jury shall render a verdict upon the concurrence of three fourths or more of the jurors and the verdict shall be in writing and signed by each of the jurors concurs in the verdict. Once signed, the jurors shall return to court where the court shall read the verdict. The court or any party may request a poll to be taken and the degree of concurrence in the verdict is correct.”

Arthur Cunningham

‘Let’s Make Jury Trials Easier’

Litigation in the New Hampshire Superior Court is expensive, way too expensive. As I have written in earlier opinion pieces, justice in New Hampshire Superior Court is laden with procedural abuse by those who wish to delay and cause expense as a tactic.

The first expensive hurdle is the motion to dismiss. These motions have become a challenge to the complaint laden with inordinate weight of the evidence arguments but without trial and witnesses.

ADR that ends in impasse leaves the litigant without recourse because the trial courts are not permitted to know why a case for which they are responsible has not settled.

After discovery is complete, and if the resource strapped parties get by the next expensive procedural hurdle, the summary judgment motion, he must wait for trial. I should note here that there are those cases with the potential for a large settlement or verdict that lend themselves to third party financing. The third party takes some or all of the settlement or award in exchange for bearing the expense. Such cases are not the subject here.

The several letters back and forth (his response to Atty. Colleen’s, which was responding to Atty. Richards-Sower’s) is in part a classic case of “where you stand depends on where you set it.” That said, some of the language of both of these commentators, something I hope to avoid here.

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Critical Race Theory (“CRT”) and its Fallacy

According to the Encyclopedia Britannica, Critical Race Theory is an “intellectual movement and loosely organized framework of legal analysis based on the premise that race is not a natural, biologically grounded feature of physically distinct subgroups of human beings, but a socially constructed (culturally invented) category” – created by white peoples – “that is used to oppress and exploit people of colour. Critical race theorists hold that the law and legal institutions in the United States are inherently racist insofar as they function to create and maintain social, economic, and political inequalities between – and favoring – ‘whites over nonwhites, especially African Americans.’

CRT appears to be an offshoot or successor to the political philosophy known as “Critical Theory.” Critical Theory was developed/invented by a group of Marxist immigrants to the U.S. who landed here in the 1930s from the Frankfurt School (of social theory) in Germany. Basically, these German immigrants postulated that all aspects of capitalism should be questioned and criticized with a view towards its destruction in order to obtain (material) equality. Thus, one cannot separate critical theory from CRT which seems to postulate that all of Western civilization – being white based – should also be destroyed in order to rid the world of racism and obtain social equality.

America’s early history was certainly troubled, first with slavery, then the era of segregation, as well as all of the “separate but equal” educational practices and customs designed to keep African Americans from full participation in American society and to deny them their constitutional rights.

The Fallacy

However, the fallacy or ignorance of reality of this theory is that, while a cogent argument could be made for CRT prior to the Civil War, it totally ignores our American history since then. CRT totally fails to credit or even acknowledge the Constitutional amendments, federal laws, regulations, and the enforcement of all such laws that have occurred. CRT also ignores personal involvement in these anti-racist amendments, laws and regulations of thousands of white American citizens. The Civil War was fought, and the abolition of slavery won, by hundreds of thousands of mostly white soldiers, many of whom were wounded or died in combat. Thus, CRT ignores all of the struggles of white soldiers, citizens, political leaders, legislators, judges, lawyers, bureaucrats, law enforcement agents, and ordinary people from 1865 through today to bring people of color – particularly African Americans – into full citizenship in America amid our country’s continuing the march toward equal opportunity under the law and non-discrimination.

It was almost entirely white legislators in Congress and a white presidents who:

- passed the Civil Rights Act of 1866 guaranteeing that “all persons born in the U.S. are citizens, with full and equal benefit of all laws and proceeding for the security of persons and property as is enjoyed by white citizens;”
- passed the Civil Rights Act of 1867 – known as Reconstruction, with law enforcement for Black Americans’ civil rights being vested in the Union military;
- passed, in 1868, the 14th Amendment and required that all former Confederate states had to adopt it prior to their being allowed to re-enter the Union;
- passed the Civil Rights Act of 1871 – also known as “The Force Act” or the “(Anti) Ku Klux Klan Act,” outlawing the Ku Klux Klan and similar “night rider” organizations;
- enacted the Civil Rights Act of 1875, making it a federal crime for hotel owners, restaurant owners, of railroads, etc., to discriminate against Black passengers.

CRT, however, in its fallacy, has totally failed to acknowledge the Constitution and all that it provided as a means of making the law enforcement an equal and just reality of this country.

Not in any way to demean or lessen the accomplishments, dedication, efforts and suffering of African Americans in their struggle for true equality in America, including the Black Union soldiers who bravely fought and died in the Civil War, but the truth is what it is. Today, the vast majority of white Americans believe in and support full integration of all races, and such support is why we are as far along today as we are – which is far from perfect – but headed in that direction. And such improvement has occurred because of the millions of white Americans working towards such full integration, alongside the millions of African Americans doing the same. We continue to need each other – Black and white – in order to make a more perfect union in the U.S. Thousands of white individuals rode buses in the South in the 1960s and risked their well-being and lives to register African Americans to vote and marched with African Americans in Selma and Montgomery.

Yes, there is still a lot to do in this noble crusade aimed at full integration of all races in America. And men and women of good intentions of all races are continuing to work towards this goal, as well we should.

1. This Act was subsequently declared invalid by the U.S. Supreme Court in 1883 based on what was determined to be an unconstitutional act of interference with private rights of contract.

Robert Fryer

Letter to the Editor

To the Editor,

The Concord Monitor story that was published in the July 21 issue of the Bar News was a beautiful tribute to marital master Larry Pletcher. However, it failed to mention the many years that Larry served as a marital master in the New Hampshire Superior Court.

Master Pletcher started as a per diem marital master, before he was chosen as one of the original five full-time marital masters in 1988. His work and those of the early marital masters paved the way for the creation of the Circuit Court’s Family Division. Larry was a wise and kind judge who considered himself a true public servant. He exemplified compassion and humility on the bench, recognizing the enormous obligation he carried toward the families he served. For those attorneys who appeared before him, he will be remembered as a jurist who always encouraged settlement, because he felt that the litigants knew what was best for their own families. When that did not happen, he was clear and fair in his decisions.

Deborah Kane Rein

Nancy J. Geiger

Opinions in Bar News

Unless otherwise indicated, opinions expressed in letters or commentaries published in Bar News are solely those of the authors, and do not necessarily reflect the policies of the New Hampshire Bar Association Board of Governors, the Bar News Editorial Advisory Board or the NHBA staff.
The 2021 Amendment to N.H. Alimony Statute

By Honey Hastings

Effective July 9, 2021, the percentage of income difference used in calculating alimony is reduced to 23%, from the original 30%. The governor signed the corrective legislation on that date, enacting SB 16 as Chapter 113 of the Laws of 2021. This legislation had been introduced in 2020, but got caught up in the COVID-19 and politics mixture in the NH House and was vetoed that year.

The legislation provides a window for people with alimony orders effective on or after January 2019 to request modification of the amount of alimony used in their case. The window would be open for any orders amounting to more than 23% of the difference in gross incomes. Such requests for modification must be made by July 1, 2022.

Chapter 113 fixes the problem created by the elimination of the federal tax deduction for alimony that took effect January 1, 2019. This unanticipated federal action changed the expected after-tax outcomes for payors and payees using the NH alimony formula. After reviewing alternate formulas over a range of incomes with the help of divorce financial analysts, the Alimony Working Group (made up of experienced divorce professionals) concluded that 23% of the difference in gross incomes under the 2019 tax law produced similar results to 30% of the difference under the old tax law.

The 30% alimony formula had taken effect January 1, 2019. However, under the 2018 enacting legislation, prior to that date, divorcing parties could choose to use the formula and many did in mediation and other settlement negotiations. If the divorce was effective in 2018, the 30% formula works, as the new tax law continues alimony deductibility for these cases.

The key provision of the legislation is this change in income difference percentage. Another provision of the amendment adds the “impact of federal tax law on the parties” to the list of special circumstances that may result in adjustment to the formula or duration limitation. The amendment also clarifies that any modifications of alimony orders may be retroactive to the date the other party received notice of the modification petition.

“The legislation provides a window for people with alimony orders effective on or after January 2019 to request modification of the amount of alimony used in their case.”

Practice tips

A. In mediation and other settlement negotiations, work with the 23% formula and file a calculation form that shows that you have done so.

B. Alert clients who have a 30% (or more than 23%) agreement or order from 2019 forward about the change.

C. In appropriate cases, recommend filing to reduce the percentage before the window closes next July.

D. Remember, if you or the court use 30% or any percentage over 23%, without noting statutory “special circumstances,” the alimony order may be subject to modification for the next year.

The 2021 law also clarifies that, with narrow exceptions, only divorce cases filed after January 1, 2019 are covered by the formulas and other provisions in the alimony reform act. That is, parties to an older divorce may not file to modify based on the 2019 change in the statute. If there are other grounds for modification, the court would use the law in effect at the time of the divorce to rule on them.

The main reason for limiting the alimony reform law to new cases is that property division and alimony are often interdependent. For example, a person might agree to “no alimony” in return for more than half the assets. Re-opening the case later to seek alimony could be unfair. Also, we don’t want every old alimony case to come back to court!

Honey Hastings is an inactive/retired member of the Bar and a practicing Certified Family Mediator. She operates Amoskeag Continuing Education and advocates for family law reform.

“The legislation provides a window for people with alimony orders effective on or after January 2019 to request modification of the amount of alimony used in their case.”
what the “new normal” is and how it compares to the “old normal.” Although we cannot resolve the many uncertainties, the New Hampshire Bar Association is making its best effort to provide support and resources to you. Those include:

- The Committee on Cooperation with the Courts is, in this same issue, asking that you send questions and comments to its Chair, Pamela Phelan, so we bring them to the courts. You can also address those concerns to any committee member listed at the end of Pam’s announcement. Lastly, please know that we expect differing views and want to hear them all. Write to Pam at pmelap@drcnh.org.
- The Ethics Committee offers many resources through the Bar’s web site, including its formal opinions, Ethics Corner articles, the helpline, all of which you can access here: https://www.nhbar.org/resources/ethics/obtain-answers. Recent CLE materials, including Committee Chair Stephanie Burnham’s “Client Communications During a Pandemic,” are available in the Bar’s CLE materials.
- The Bar has worked to provide services which will help our members through the challenges of post-pandemic practice. Through Affinity Consulting, the Bar offers free technology consulting called TechConnect at https://www.nhbar.org/techconnect/. The Bar also offers discounted encryption and electronic signature services through RPData and discounted cloud-based investigative software through Tracers.

If there is a specific form of support you would like the Bar to provide, whether it relates to technology, or the courts, CLEs, or anything else, please write to me and tell me—richard@nhdefender.com.

By Misty Griffith

To assist members with research needs, the New Hampshire Bar Association provides a variety of benefits including valuable free access to Fastcase online legal research database and Hein Online, as well as provider discounts for Tracers and ABA Books for Bars. Fastcase, valued at $995 per member annually, gives members unlimited access to one of the largest law libraries in the world. If you want to look up past Bar News or Bar Journal articles, the NH Bar’s full publications archive is available for free on the NHBA website via Hein Online. When performing discovery or due diligence, consider taking advantage of your member discount for Tracers database designed to help you find key pieces of information available in public and private records. If you are building your own law library, take advantage of your NHBA member discount on ABA Books for Bars. Fastcase is your newest NHBA member benefit. Casemaker merged with Fastcase combining their resources to offer a comprehensive set of tools and products. NHBA members will continue to receive the member benefit of free access to legal research offered under the Fastcase brand.

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To assist members with research needs, the New Hampshire Bar Association provides a variety of benefits including valuable free access to Fastcase online legal research database and Hein Online, as well as provider discounts for Tracers and ABA Books for Bars. Fastcase, valued at $995 per member annually, gives members unlimited access to one of the largest law libraries in the world. If you want to look up past Bar News or Bar Journal articles, the NH Bar’s full publications archive is available for free on the NHBA website via Hein Online. When performing discovery or due diligence, consider taking advantage of your member discount for Tracers database designed to help you find key pieces of information available in public and private records. If you are building your own law library, take advantage of your NHBA member discount on ABA Books for Bars. Fastcase is your newest NHBA member benefit. Casemaker merged with Fastcase combining their resources to offer a comprehensive set of tools and products. NHBA members will continue to receive the member benefit of free access to legal research offered under the Fastcase brand.

Access to Fastcase is now available through your My NHBar Portal. No new set up is required.

Fastcase is the leading online legal research service that provides access to a comprehensive, nationwide law library, including case law, statutes, regulations, court rules, constitutions, and law review articles. Soon you will see new innovations in citator, docket analytics, and workflow tools, maximizing your bar member benefit. It offers primary legal research, as well as more than 750 books, treatises, and journals to their users. Fastcase also integrates with Docket Alarm’s briefs, pleadings, and motions database and syncs with a mobile app, on iOS and Android. Visit the Fastcase Resource Library to register for a free training webinar. Go to fastcase.com/support/#tutorials.

Past issues of NHBA publications are available via Hein Online, the premier online database providing access to legal history in a fully searchable, image-based format. The publications archive encompasses Volumes 1 to 55 of the New Hampshire Bar Journal, beginning in 1958, and Volumes 1 to 28 of the New Hampshire Bar News, beginning in 1990. Access the Hein Online publication archives by going online to www.nhbar.org and signing into the My NHBar Portal with your Bar ID# and password.

Newly added as a member benefit in May 2021, Tracers provides law firms access to an online database of over 43 billion records for asset searches, comprehensive people search, sometimes it helps to have a hard copy of often used books for easy reference or to mark up as you see fit. When purchasing books for your practice, keep in mind that you do not have to be an ABA member to receive a discount on ABA publications. Members of the New Hampshire Bar Association save 15% off the general public price on all books available in the American Bar Association web store when using the special discount code: PABSENHB at checkout.

The NHBA offers these benefits to help members with their legal research needs. To learn more about these and other great NHBA member benefits visit nhbar.org/resources/member-services/benefits or contact Member Services Coordinator Misty Griffith at mgriﬃth@nhbar.org or call (603) 715-3227.
Wellness from page 3

...sure, lack of time for non-work interests, meeting expectations of clients and coworkers, inability to control or guarantee outcomes, perfectionist tendencies — that can have a negative impact on mental health. The problems start early, because similar levels of anxiety, depression and problem drinking have been found in surveys of law students.

Thankfully, leaders in the legal profession have started to focus on the issue of lawyer well-being. In 2017, the American Bar Association released a report entitled “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change.” That report contained an extensive discussion of how different parts of the legal profession (employers, judges, bar associations and practitioners) could help alleviate these problems.

This effort already has sparked increased attention and positive change at the local level. In 2019, the Oregon State Bar hosted the Summit on Lawyer Well-Being and the Oregon Supreme Court mandated one hour of continuing legal education on mental health, substance use and cognitive impairment. The Bulletin devoted an entire issue to the lawyer well-being and the Oregon Supreme Court mandated one hour of continuing legal education on mental health.

The ABA report included a specific recommendation: “Mindfulness meditation is a practice that can enhance cognitive reframing (and thus resilience) by aiding our ability to monitor our thoughts and avoid becoming emotionally overwhelmed. A rapidly growing field, mindfulness practices act to prevent or reduce stress and other symptoms of distress.”

Several studies have reported lower levels of depression, anxiety, stress and negative mood, as well as increased levels of positive mood, resilience, and workplace effectiveness.

How to Start a Mindfulness Practice

Starting a mindfulness practice is much easier than you might think. To keep it simple, I have identified two key components: daily meditation and being present in everyday life.

Daily meditation: For many people, this is the most intimidating part of a mindfulness practice. The good news is that meditation is actually quite simple. All you need is a quiet place to sit.

Close your eyes and just focus on your breathing. Many people find it helpful to count their breaths — one for the in-breath and so on up to 10, then repeat. This gives your mind something to focus on. You can start out by trying this for five minutes.

Another great way to start is by using an app. There are several fantastic apps that help people learn to meditate and support an ongoing meditation practice. My two favorites are Headspace and Insight Timer. Both of them have lots of free content, along with a subscription model if you want to access more content.

Once you try meditation, you quickly will learn that your mind does not want to settle down. As you try to focus on your breath — or on a guided meditation — your mind will be worrying about the future, or ruminating on the past, or commenting on whether you are doing a good or bad job meditating, or any number of other things.

This is natural. It’s not possible to stop our minds from thinking, just as it’s not possible to stop your lungs from breathing. This is especially true for lawyers, who have been trained to think constantly about all possible contingencies in every situation.

Thoughts will come and go, but you’re not doing anything wrong when you have those thoughts. Thinning brains actually help us immensely. But they just need a little down time in the same way that you can’t exercise indefinitely, so the key is to notice your thoughts, let them go and then return to a focus on your breath.

The neuroplasticity comes from realising when you have become distracted and helping your brain settle down. The act of noticing that you are distracted is like a mental pushup.

Being present in everyday life: While this aspect of mindfulness sounds easier than meditation, it turns out to be quite challenging, especially in our distracting modern world.

According to one widely quoted study, a person’s mind is not focused on their present task almost 50 percent of the time. Put another way, we are doing one thing, but our mind is somewhere else, during half of our waking hours. While you might congratulate yourself on being a great multitasker, the reality is that you are simply switching between tasks very rapidly. Our brains cannot focus on more than one thing at a time.

This phenomenon has gotten worse in recent years. Imagine the daily life of a lawyer 20 years ago, or even 40 years ago. The pace of practice was far slower. Then letters became e-mails. E-mails became text messages. Your office computer became a computer that you carry around all day and put next to you at bedtime. For most lawyers, there is no way to leave work — unless you intentionally create that space.

The goal of mindfulness is to be aware of our wandering mind and to bring it back to the task at hand. You can be mindful at any time, during any activity, simply by being intentional about focusing on what you are doing.

You can try being mindful during a walk, noticing the sounds around you, the objects you pass and the feel of your steps on the ground. I have been amazed at all of the things I have noticed on my daily walks once I started paying attention. You can practice mindfulness while eating, brushing your teeth or doing the dishes. As you become
more mindful, this naturally results in an increase in gratitude.

**Setting Realistic Goals**
I hope that this article provides a helpful introduction to mindfulness, along with some evidence-based information to encourage you to give it a try. Fostering a mindful-ness practice has made a tremendous difference in my life. I hope that some of you will get the same benefit.

I want to leave you with a final caveat: Mindfulness is not a cure-all. The goal is to improve your life, not magically change it. Mindfulness does not eliminate the parts of your everyday life that have caused challenges for you. The goal is to get some distance from those parts of your life — to see them in a new perspective — by focusing on being present and by learning to calm your brain.

Mindfulness also is not a substitute for treatment by a trained professional, especially if you are dealing with more severe challenges.

Mindfulness is simple, but it’s not easy. It’s a lifelong process, not a miracle cure. That’s why it’s called a practice. The good news is that it’s never too late to start.

Over the past two decades, John Devlin has worked as a commercial litigator, deputy district attorney, personal injury lawyer and civil rights lawyer. He currently mediates all types of civil disputes. Reach him at john@johndevlinlaw.com.

1. Dr. Sara Lazar gave a fantastic TEDx talk in Massachusetts in 2019. In just the first 10 months of 2019, Lubin & Meyer achieved over $150 million in verdicts and settlements in the areas of medical malpractice and catastrophic personal injury law than any other law firm in the region.

In just the first 10 months of 2019, Lubin & Meyer achieved over $150 million on behalf of its clients in Massachusetts, New Hampshire and Rhode Island.

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**IN 2019**

**$150M+ RECOVERED**

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**Neurological birth injury settlement** $3,500,000.00

**Notable Highlights of 2019**

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It was at a conference for the association’s IOLTA grants program. For those who are unfamiliar with it, here’s how it works.

In 1982 the New Hampshire Supreme Court adopted Rule 50 establishing the IOLTA Program in New Hampshire.

The program takes interest earned on lawyers’ trust accounts that are either too nominal or held for too short a time to warrant establishment of a separate client account and then forwards the interest to the New Hampshire Bar Foundation to be used for charitable purposes.

The establishment of IOLTA in the United States followed changes to federal banking laws passed by Congress in 1980, which allowed some checking accounts to bear interest. Prior to 1981 lawyers were required to place money from their clients in a non-interest-bearing account.

IOLTA programs currently operate in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

“By 1981, literally millions of dollars were left in IOLTA accounts and IOLTA program development was underway,” said Patrick.

Patrick added that the IOLTA program has grown significantly over the years and that it is now a national effort.

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Timothy Ryan DeMarco

Timothy Ryan DeMarco, a Boston-area attorney who lived in Pittsfield, Mass., died July 7 after a 17-month battle with lung cancer. He was 36.

A Michigan native, DeMarco graduated from the former St. Joseph’s High School in Pittsfield and Stonehill College before earning a J.D. from Suffolk University Law School in 2012. DeMarco worked at Nelson Mullins in Boston as an associate specializing in consumer finance before moving to K&L Gates. He was later an attorney at Citizens Disability, a Social Security disability advocacy group.

DeMarco is survived by his wife, Vanessa; his parents, William and Ginny Costigliano DeMarco; three brothers, William DeMarco, Jr. and wife Brianne, Brian DeMarco and wife Heather, and Daniel DeMarco; and his sister, Katherine Swan and husband Darren.

Stephen K. Fogg

Stephen K. Fogg, a longtime Boston attorney, died May 6 after a long battle with cancer. He was 70.

A resident of North Port, Fla., who formerly lived in Dover, Mass., Fogg graduated from Saint James High School in Haverhill, Mass., and Boston College before earning a J.D. from Boston College Law School. Fogg, who previously worked as assistant counsel for Wheela Corporation-Frye Inc. in Hampton, N.H., and for Maris and worked in private practice, had a J.D. from Boston College Law School in 1985 and from the University of New Hampshire in 1989. Mierens began his career as an educator, teaching at-risk kids and working at a juvenile facility in New Hampshire. He later decided to attend law school and graduated from the Franklin Pierce Law Center in 2003. After living on the East Coast for many years, Mierens accepted a position with the Elko County Public Defender’s Office as a deputy public defender. He served in that position for five years before being appointed as the family court master for the 4th Judicial District Court in 2012.

As a judicial officer, Mierens felt he had found his calling. He was passionate about the children and families that he served. He worked diligently to make a difference in their lives and to help get kids back on track.

Mierens served for many years as an adjunct instructor at Great Basin College and could frequently be found teaching continuing education courses to attorneys, judges and law enforcement professionals. He especially enjoyed going to the police academy in Carson City, Nev., twice a year to teach a course with two of his close friends and colleagues.

Mierens is survived by his wife, Gail Davis Mierens; his sons, Matthew and Nikolas; his mother, Virginia Mierens; his sister, Susie Mierens; and several aunts, uncles, nieces, nephews and cousins.

Charles Bernard Moegelin

Charles Bernard Moegelin, a longtime attorney in Lowell, Mass., died April 14 following a long and courageous battle with cancer. He was 72.

Born in Arlington, Mass., he was the son of the late Ernest and Bernadette Moegelin. He graduated from the University of Massachusetts and Boston University School of Law. He proudly served in the U.S. Army.

A resident of North Andover, Mass., Moegelin practiced law in Lowell for more than 40 years, operating his own firm, Novick & Moegelin. He was dedicated to his clients and the city of Lowell.

Moegelin is survived by his wife of 42 years, Janice (McLEM) Moegelin, and four children: Karla Lockwood and husband Jesse of Miami; Kristina Scandone and husband Kyle of North Andover; Joseph Moegelin and wife Brittany of Lawrence, Mass.; and Matt Moegelin of North Andover. He leaves behind three grandchildren, Sam and Caroline Lockwood and Summer Scandone.

Timothy Dylan Moore

Timothy Dylan Moore died March 9 in hospice care at his parents’ home in Clinton, Miss. He was 49.

A resident of Jackson, Miss., and graduate of the University of Mississippi School of Law, Moore was licensed to practice law in Mississippi, Louisiana and New Hampshire in 25 years of law practice. Moore built a reputation as a tenacious, intelligent advocate and litigator, trying more than 60 cases to juries, judges, arbitrators, and administrative agencies. He was honored by Martindale-Hubbell, the leading national legal publication, with the prestigious AV Preeminent rating.

Moore was survived by his wife, Paige, and his sons, Max and Conner, of Jackson; parents Tony and Vicky Moore of Clinton; brothers Todd Moore of Southern Pines, N.C., and Joel Moore of Denver, Colo.; brothers-in-law Sam Wilkins Jr. and Rocky Wilkins of Jackson; several cousins and many nieces and nephews.

In Memoriam

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In the News

Arthur G. Greene

We are currently seeking individuals to answer LawLine calls on December 8, 2021, from 6:00pm to 8:00pm. The Bar forwards phone calls from people who are looking for general legal advice and information. We can forward calls to up to 20 different phone numbers, as long as they are landlines. The Bar provides a light dinner for all volunteers. For more information on volunteering, please contact NHBA LawLine Coordinator, Linda Sutton at lawline@nhbar.org.

LawLine Thank You

The law firm of McLane Middleton is pleased to announce the hiring of attorneys Patrick O. Collins and Kyle J. Scandore. Collins joins the firm as a director in the Trusts & Estates Department and Scandore joins the firm as an associate in the Corporate Department.

The NH Bar Association would like to thank Attorneys Pamela Kozlowski, Jack Kauders, Omer Alber, Jim Laffan, and Pat Castagnos, for taking part in July’s LawLine on Wednesday the 14th. They fielded over 40 calls from the public on a variety of legal issues, including family law, probate, landlord/tenant, and criminal law.

We are currently seeking individuals to answer LawLine calls on December 8, 2021, from 6:00pm to 8:00pm. The Bar forwards phone calls from people who are looking for general legal advice and information. We can forward calls to up to 20 different phone numbers, as long as they are landlines. The Bar provides a light dinner for all volunteers. For more information on volunteering, please contact NHBA LawLine Coordinator, Linda Sutton at lawline@nhbar.org.
We are pleased to announce

Nicholas A. Kanakis

has joined our firm as an Associate.

Attorney Kanakis earned his BS Degree in business administration at the University of New Hampshire and his JD from University of the Pacific, McGeorge School of Law. He is admitted to practice law in New Hampshire and the United States Bankruptcy Court for the District of New Hampshire.

Attorney Kanakis focuses his practice on commercial real estate transactions, estate planning and probate, collections, and corporate law. Attorney Kanakis also participates as a volunteer attorney with the Nashua Consumer Debt Docket and serves on the Nashua Zoning Board.

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Proud to Welcome Attorneys Brittani Schanstine & Leah Cole Durst

Attorney Brittani Schanstine joins our Dover office. Brittani will work with clients and provide legal assistance in a range of practice areas, including:

- Personal Injury
- Family Law
- Employment and Business Law
- Estate Planning

Prior to joining Shaheen & Gordon, Brittani worked as a summer associate at an Am Law Top 200 firm in Milwaukee, WI—where she performed invaluable research and casework, as well as aided in trial preparation.

Attorney Leah Cole Durst joins our Concord office. Leah represents clients facing a range of legal challenges, including:

- Criminal Defense
- Civil Rights
- Employment Law—Plaintiffs

Before joining Shaheen & Gordon, Leah worked as a staff attorney with Greater Boston Legal Services. She participated in their COVID Eviction Legal Help Program (CELHP) to provide legal information, assistance, and representation to low-income tenants affected by COVID-19.

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Thinking About a New Phone System for Your Office?

By Hank Plaisted, NHBA Information Technology Coordinator

The telephone industry has come a long way since Alexander Graham Bell reputedly uttered, “Mr. Watson, come here, I want you.” Bell’s device was effectively a fancy pair of cans with a copper wire between them while most of today’s cellular telephones are miniaturized powerhouse computers which just happen to have some phone software built into them.

The NH Bar Association recently upgraded its business phone system, and it seems like an appropriate time to touch upon this technology for our members. Understanding this system and the process we went through to find it could be helpful for firms thinking of making changes to their current systems.

Let’s talk about the process the NHBA office worked through to get our new phone system installed.

Our aging PBX system experienced a couple of hardware failures early in the Spring, so it was clear we had to invest in either a substantial upgrade or an entirely new system. With VOIP systems having reached maturity it seemed like a ripe opportunity to explore all the possibilities while keeping an eye on both the bottom line and ease of use.

It was quickly apparent to us that the sheer number of players in this market is overwhelming, so we contacted Matt Ide of Cloud Technology Advisors (CTA), a company that specializes in helping businesses sort through the maze. It was especially important to have the old system updated or a new system installed and operational prior to the June 1 membership renewal date, which did not give us much time. CTA worked with us to develop an understanding of our operations so they could direct us to the vendors most likely to meet our needs.

Setting up a phone system is a substantial investment in both time and money, so it makes sense to think strategically about the process. We built a vendor table with forecasts for the total cost of ownership at both 3 and 5 years of service for each of the vendors. To our surprise, the substantial initial cost to upgrade our existing system was balanced by a lower monthly cost over the 5-year term, making it fairly competitive as an option.

Still, as we compared features and ease of use, the VOIP systems came to the fore. One of our target features was robust reporting that would allow us to analyze and improve our business practices and, in this area, the VOIP providers easily exceeded what we could do with an internal PBX. Most VOIP vendors will tout the variety of tools available to the end users in their systems. There is an industry convergence toward providing a Unified Communications platform, but it is worth evaluating which technologies are likely to be used in one’s own organization as part of an evaluation.

As an example, some of the vendors we met offered video conferencing solutions as part of their package. The NHBA is already using Go to Meeting, Zoom and Teams for video conferencing so this feature added no additional weight to a vendor’s proposal. On the other hand, with the pandemic still fresh in our minds, it was important for us to have at least one way for staff to communicate if they are working from home or otherwise away from the office.

In the end, the system we selected included a desktop telephone for the office, a web/browser-based interface for a computer, and a “soft” phone client for mobile devices. The latter can be especially helpful as it allows an employee to make and receive work phone calls on their own cell phone without requiring that they provide their personal telephone number to colleagues or clients. Similarly, staff working from home can use their computer for calls using only their work telephone number. An additional feature which we had in our old system that was considered a must-have was voicemail to email processing. All of our voicemail messages are delivered to staff as email in the form of an audio attachment and transcribed text. It’s worth noting that the latter can often lead to hilarious, if entirely incorrect results.

Once the agreement was in place, we went to work on planning for the deployment by counting up the total number of phones we would need, being sure to include those devices in public spaces like the kitchen and copier room and placed an order for a mix of higher end desktop phones for staff and simpler wall mountable phones for the rest. Then, we created a list of all the phone numbers we would be migrating to our new vendor in a process called “porting” which is simply transferring a specific phone number from one vendor to another. After providing a list of staff and public space phones to the vendor, they setup temporary phone numbers in their system so we could immediately begin testing when the phones arrived. In the meantime, we checked all of our network connections and our internet link to make sure we could handle the additional network traffic the new phones would generate. Fortunately, our internal network is rock solid, but this is certainly an area anyone preparing to move to VOIP should confirm for themselves.

When the phones arrived, we deployed a small number of them to begin our testing. Because we were able to forward calls from our old phone system to the temporary numbers with our new vendor, we were able to test without fully committing to the new

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system. We made it clear that we would not port our phone numbers until we were fully satisfied with how things were working. Once our initial testing was complete, we rolled out the new phones to all staff, but continued with the forwarding calls model for a period of time while we worked out some issues that were affecting call quality. Most of those problems were related to the performance of the internet circuit which we were able to address with some configuration updates on our firewall. I cannot overemphasize the importance of having a very reliable internal network and properly configured internet access to ensure high call quality. Like video conferencing, voice traffic is much more susceptible to issues in connectivity than standard web browsing, email, etc. so it is imperative that these services are prioritized with QOS and/or other traffic shaping technology.

As with most technology projects, this one lasted longer than initially anticipated and came with plenty of bumps along the way. While we tried to prepare as much as possible, there were still some things we did not or could not anticipate. If I was to advise anyone else venturing into this arena, I would recommend the following:

- Get some help. Consultants like CTA are typically paid by the phone vendors not the clients so there is no additional cost to utilize their services and they offer a wealth of information and insight that would be quite costly in time to learn on one’s own.
- Enlist input from your key stakeholders to be certain you are focusing on systems which meet the needs of your organization. If possible, develop an RFP which makes it clear exactly which features are critical to your business and what you expect from the vendor(s). Note that introducing options like a smartphone app for employees may necessitate some consideration of new or revised policies about work schedules, availability, etc.
- Make sure your network and internet are both fast and reliable. Most VOIP vendors will provide a tool to test the internet side of things that may show much different results than the typical free stuff found online. Trust them in this regard as their entire business is dependent on making sure the connectivity from end to end is as solid and efficient as possible.
- Know your phone numbers. If you are transferring your phone numbers to a new vendor, double and triple check your list before sending it to them. Then ask for the list in return before approving the port, just to be totally sure.
- Plan for a variety of training. While the basics of using a phone are nearly universal, VOIP systems offer so many additional options. Also keep in mind there may be varying needs depending on staff roles. Clearly a front desk staff person needs a deeper understanding of call management than does a janitor. Know your people and plan accordingly.

Endnotes

1. PBX: A telephone system including all the pieces necessary to connect the actual telephones to the PSTN/Internet so users can make and receive calls. It may include specialty features like a Voicemail system, On-Hold music, intercoms, doorbells, etc. Typically, PBX refers to a device or set of devices stored on premises of an organization or business.

2. VOIP: Voice Over Internet Protocol – a means to use the internet for phone calls (and SMS/Text Messages) instead of POTS.

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- The Honorable Gordon J. MacDonald
Chief Justice, New Hampshire Supreme Court (former DOVE volunteer)

NEW HAMPSHIRE BAR NEWS www.nhbar.org AUGUST 18, 2021 15
Limitations on Client Gifts to a Lawyer
Ethics Committee Advisory Opinion #2011-12/7

ABSTRACT
The Committee analyzed several scenarios where a lawyer was asked by a client to benefit either the lawyer or the lawyer’s family by a present or testamentary gift. In this opinion, the Committee discussed the issues of direct gifts to the lawyer, gifts to individual related both to the testator and the lawyer, and a gift to a charitable organization for which the lawyer raised funds.

ANNOTATIONS
Guidance concerning gifts from a client is found in Professional Conduct Rule (hereafter “Rule”) 1.8(c), that states as follows: “A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.”

Nothing in the Rule prohibits a lawyer from preparing a document that gives a client’s assets to a person related to both the client and the lawyer. Thus, unless the client has an estranged relationship with his brother, he surely would be considered “a related person to the client” and therefore exempted from the application of this Rule.

The intended future gift of the tickets and $200 for dinner is not controlled by a reading of Rule 1.8(c). Nevertheless, because a lawyer holds a position of trust and confidence when representing a client, the proposed transaction in Scenario 3 must be evaluated based upon applicable standards governing fiduciary relationships.

The intended gift to the hospital clearly is nothing that benefits the lawyer or her family directly. Therefore, as long as the testamentary gift of $50,000 is not the product of solicitation or encouragement on the part of the lawyer, preparing a trust that includes the gift is not prohibited under Rule 1.8(c). Because of the lawyer’s direct and close involvement with the hospital, however, this intended gift must be closely scrutinized under Rule 1.7. Accordingly, the lawyer could only proceed to draft the provision for the client’s bequest to the hospital’s endowment fund after fully discussing the potential conflict with the client and obtaining the client’s informed consent as required under Rule 1.7(b)(4).

OPINION
ISSUES PRESENTED:
What ethical guidelines or limitations apply when a lawyer is asked by a client to benefit either the lawyer or the lawyer’s family by a present or testamentary gift?

Factual Background: Estate planning lawyers, especially in smaller New Hampshire communities, may be called upon by their clients when drafting client wills and trusts to include provisions that may benefit the drafting lawyer or that lawyer’s family. In this situation, following a recent health scare, a long standing client is now focusing on estate planning matters. During discussions with the lawyer, the client wants to allocate a substantial sum of money that possibly could benefit the lawyer or her family. Over the last twenty years, the lawyer has assisted the client with estate planning, business and a myriad of other legal issues affecting the client and his family. In fact, the client’s brother is married to the lawyer’s daughter. The client is a long-standing member for the local hospital, in which both client and the lawyer serve on the endowment committee to steer a major campaign (of which the lawyer is the chair). In this context, the client desires to make the following testamentary and lifetime gifts:

Scenario 1: Client desires to leave in trust a recently purchased sports car to the lawyer’s son-in-law (and the client’s sister-in-law), a $5,000 gift for the lawyer’s daughter, a gift to a charitable organization (under the doctrine of unrelated fund), and a gift to the client’s brother (and the lawyer’s sister-in-law) to be used for the lawyer’s daughter.

Scenario 2: Client desires to leave in his trust a valuable painting to the lawyer’s daughter (and the client’s sister-in-law). The lawyer shall not solicit any substantial gift unless the lawyer is related to either the lawyer or a person related to the lawyer. A gift to a charitable organization for which the lawyer raised funds.

Scenario 3: In appreciation for all the work provided over the years, client desires to give the lawyer tickets to the Palace Theater and $200 for a nice dinner out for the lawyer and her husband.

Scenario 4: Client desires to leave in his trust $50,000 to the hospital’s endowment fund for general use purposes.

ANALYSIS:
Guidance concerning gifts from a client is found in Professional Conduct Rule (hereafter “Rule”) 1.8(c), that states as follows:

“(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.”

This prohibition is triggered either through a solicitation by the lawyer (not involved in this situation) or the lawyer’s preparation of an instrument containing a substantial gift, which clearly includes the lawyer’s drafting of a client’s revocable trust. Quite clearly Rule 1.8 (c) prohibits the lawyer from including any provision in the trust that would provide any substantial gift directly to the lawyer drafting the trust unless the lawyer is related to the client.

Scenario 1: The intended future gift of the sports car to the lawyer’s son-in-law certainly could be construed as a potentially prohibited transaction to a person related to the lawyer were it not for the fact that the son-in-law is also the client’s brother. Rule 1.8(c) de fines related persons to include persons who “maintain a close, familial relationship,” as well as those related by blood to the lawyer or client. However, nothing in the Rule prohibits a lawyer from preparing a document that gives a client’s assets to a person related to both the client and the lawyer. Thus, unless the client has an estranged relationship with his brother, he surely would be considered “a related person to the client” and therefore exempted from the application of this Rule.

Scenario 2: The intended future gift of the valuable painting to the lawyer’s daughter is clearly prohibited since she is definitely a “person related to the lawyer.” It is possible that the client’s sister-in-law (married to the client’s brother) values $500 roughly as much as a “person related to the client” as is intended under Rule 1.8(c). Such a finding, however, would require a factual analysis of the familial relationship to determine whether the relationship is “close” and similar to other familial relationships listed in Rule 1.8(c), such as a spouse, child, grandchild, or grandparent. It should not be summarily assumed by the lawyer that a sister-in-law would enjoy that status.

Scenario 3: and Unsolicited Client Gifts: The unsolicited gift of the tickets and $200 for dinner is not controlled by a reading of Rule 1.8(c). Nevertheless, because a lawyer holds a position of trust and confidence when representing a client, the proposed transaction in Scenario 3 must be evaluated based upon applicable standards governing fiduciary relationships.

ABA Comment [6] is instructive, stating in part: “A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent.”

Substantial unsolicited gifts, however, will be closely scrutinized. See, e.g., Restatement of the Law, The Law Governing Lawyers’ Fees, §127 (2000), which states:

“(2) A lawyer may not accept a gift from a client, including a testamentary gift, unless:
(a) the lawyer is a relative or other natural object of the client’s generosity;
(b) the value conferred by the client and the benefit to the lawyer are in substantial excess of the value of the gift;
(c) the client, before making the gift, has received independent advice or has been encouraged, and given a reasonable opportunity, to seek such advice.”

The rationale for this, as stated in Comment b. to Section 127, is that any valuable gift to the lawyer “invites suspicion that the lawyer overreached or used undue influence.” See also ABA Comment [6] to Rule 1.8 articulating the concerns of “overreaching and imposition on clients” which may accompany a lawyer’s receipt of a substantial gift from a client. Comment f. to Section 127 also provides helpful guidance in determining what constitutes a substantial gift, which is evaluated based upon the relative wealth of the client. Thus, depending upon the facts, a $100 gift from a poor client may be considered substantial, whereas a $1,000 gift from a wealthy client may be considered insignificant. This Restatement section cites many cases in which unsolicited substantial gifts from a client to the lawyer were set aside as being unfair, and in which the lawyer was forced to disgorge any benefit received from such gift. See also, those cases and other authority cited in The American Col.
Ibid

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hospital clearly is nothing but a benefit to

Agreement under RSA § 564-B:1-111, or by

trust context, this similarly could be handled

proceeding, this could be obtained by the

practice would be for the lawyer either to

other law pertaining to gifts to lawyers.

be considered an insubstantial gift, and there

client to his long time lawyer and friend, it

theatre tickets and a dinner by a fairly wealthy

In this particular scenario, however,

death and trust accounts

by a client

dicating it "is determined by reference both to

assessing the "substantially of a gift" by in

Thus, the undisputed donor’s gift, certainly

present "a personal interest of the lawyer" and

and responsibilities to... a third party" that

would constitute a concurrent conflict of in-

terest under Rule 1.7(a)(2). In analyzing this

issue the lawyer should further be mindful of

the application of New Hampshire’s “harsh

reality” rule, as is discussed extensively un-

der the Ethics Committee Comment to Rule

1.7.

This “harsh reality” test effectively es-

ablishes a two-step process in proceeding

under a Rule 1.7 analysis. The first step is

whether a disinterested, objective lawyer

reasonably believes that an existing concur-

rent “conflict of interest” (as made in this situa-

tion the lawyer’s own personal interest in furthering

the objectives of the hospital’s endowment

committee) actually can be waived by the cli-

cent in the first instance. Only after satisfying

that first step may the lawyer then seek to ac-

complish the second step, which is to obtain

the client’s informed consent. It is important to

keep in mind, however, that the first step of

this analysis always is reviewed after the

fact, when something has gone wrong, by a

disinterested lawyer, and not through the

subjective lens and belief of the lawyer ac-

tually making the initial decision to proceed

with the representation. It should also be

noted that in Maryland’s Ethics Op. 2003-

08 (2003), that Committee concluded that a

lawyer on a church legacy committee may

not prepare wills for church members who

wish to bequeath property to the church. That

Committee took the position that the drafting

doctor's membership on the church legacy

committee impeded the lawyer’s independ-

ent professional judgment and ability to

render candid advice (under Rule 2.1), thus

prohibiting the lawyer from forming a rea-

sonable belief that representation of fellow

church members would not be “adversely

affected.” This Committee, however, does not

conclude that mere membership on an endowment

committee of a hospital benefitting

under a client’s estate plan creates such a con-

current conflict of interest that would, in

all situations, prohibit the lawyer from seek-

ing client consent in compliance with Rule 1.7(b).

Accordingly, the lawyer could only pro-

ceed to draft the provision for the client’s be-

quest to the hospital’s endowment fund after

fully discussing the potential conflict with

the client and obtaining the client’s informed

consent as required under Rule 1.7(b)(4). So

while the lawyer is not prohibited from

this transaction, care must be taken that the

lawyer has sufficiently disclosed all “mate-

rial risks of and reasonably available alterna-

tives to the proposed course of conduct” (see,

definition of “informed consent” provided in

Rule 1.0(e)). It is important to be mindful that

Rule 1.7(b)(4) requires that such informed

consent be “confirmed in writing” as is de-

fined in Rule 1.0(b).

While Rule 1.7 does not require the cli-

cent to sign and acknowledge the informed

consent, certainly the best practice is to do so.

SUMMARY: In conclusion, however in-

nocuous a client’s request may be to have the

lawyer accept a gift or draft legal documents

that could be construed to benefit the law-

yer or the lawyer’s family, each transaction

must be carefully scrutinized under the above

Rules of Professional Conduct and law per-

taining to clients making gifts to lawyers.

Rule References: Rule 1.8(c)

Rule 1.7

Rule 1.7(a)(2)

Rule 1.7(b)(4)

Rule 1.0(f)

Rule 1.0(b)

Rule 2.1

Subjects: Client Gifts to Lawyer
Conflict of Interests
Informed Consent
Confirmed in Writing

• By the NHBA Ethics Committee

This opinion was submitted for publication to the NHBA Board of Governors at its April 11, 2012 meeting.

1. New Hampshire’s Supreme Court addressed Rule 1.8(c) violations in two attorney disciplinary cases. The lawyer in Kalled’s Case, 135 N.H. 557 (1992), pleading ignorance of Rule 1.8(c), and af-

fer undertaking several other egregious Rule vi-

tions in addition to preparing instruments award-

ing the lawyer substantial gifts, was disbarred. The Court in Whelan’s Case, 136 N.H. 559 (1992), de-

termined that the respondent/lawyer did not vio-

late Rule 1.8(c), through imputation under Rule 1.10, since he had no participation in drafting the will that benefited another lawyer in his firm; this was decided prior to New Hampshire’s adoption of Rule 1.8(k) (effective January 1, 2008).

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AUGUST 18, 2021
Providing Legal Services in Exchange for a Client’s Goods and Services
Ethics Committee Advisory Opinion #2017-18/01

ABSTRACT:
In any agreement to exchange goods or services for legal fees entered into at the outset of legal representation or during the course of such representation, a lawyer will need to comply with all the provisions of NHRPC Rule 1.8(a), including the requirement to advise the client in writing of the desirability of seeking the advice of independent legal counsel. Even if the lawyer strictly complies with Rule 1.8(a), however, the courts may view the transaction as voidable if the client later feels aggrieved by the transaction.

ANNOTATIONS:
Barter agreements are business transactions between a lawyer providing legal services and a client providing goods or services.

NHPR Rule 1.8 regulates all business transactions with clients.
While NHPR Rule 1.8 does not apply to ordinary fee agreements, it does apply when the lawyer accepts nonmonetary property as payment of all or part of a fee.

Under the ABA comments, NHPR Rule 1.8 does not apply to “standard commercial transactions” between the lawyer and the client for products or services that the client generally markets to others.

Under the Restatement, the exception for “standard commercial transactions” only applies when “the lawyer does not render legal services.” Transactions between lawyers and clients likely remain voidable by the client under New Hampshire law.

When the transaction is voided, the client may have the option to either rescind the transaction or recover damages.

Courts usually order the remedy that is “most economically beneficial to the client.”

ISSUES PRESENTED:
Whether a lawyer who agrees at the outset of representation to receive compensation for legal services in kind, rather than in cash, must advise the client of the desirability of seeking the advice of independent legal counsel, and whether compliance with Rule 1.8 prevents the transaction from being voidable.

BACKGROUND:
This opinion will include those situations where the compensation for legal services involves the exchange of services, but will be limited to situations where the discussion of barter takes place at the outset of the attorney-client relationship. While financial transactions that arise during the course of the relationship will likely give rise to the same considerations, transactions that occur before the onset or after the conclusion may not.

1. [Rule 1.8] does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5.

2. Although its requirements must be met when the lawyer accepts an interest in the client’s business or other nonmonetary property as payment of all or part of a fee.

3. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities’ services.

Rule 1.8(a), Com. 1, emphasis added.

So, ordinary fee agreements are exempt, but barter agreements clearly fall into the second category, as the lawyer is accepting nonmonetary property as payment for legal fees. That leaves open the question whether the barter agreement is a “standard commercial transaction.”

Comment 1 goes on to explain the rationale for excepting standard commercial transactions.

In such “standard commercial transactions,” the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

Id.
The idea that the client will ordinarily need to be protected from the lawyer also appears in the Restatement.

Standard commercial transactions are those regularly entered into between the client and the general public, typically in which the terms and conditions are the same for all customers. In such circumstances, the client’s interests in the transaction with the lawyer need no special protection.


This might suggest that there still may be some “standard” goods or services offered by “commercial” clients that would qualify as standard commercial transaction that you could exchange for legal fees. Perhaps a case of wine from a wine merchant or a pedicure from a nail salon would provide an exchange that does not present any chance of overreaching.

The Restatement offers the following, which sheds light on the barter situation.

A lawyer may not participate in a business or financial transaction with a client, except a standard commercial transaction in which the lawyer does not render legal services.

Id. at § 126(a) (emphasized added). In other words, since the barter transaction does involve the rendering of legal services, it cannot fall within the safe harbor of the standard commercial transaction.

Presumptions and Voidability, Lawyers need to remember that they have a fiduciary responsibility to their clients. A lawyer’s legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client.

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statement) suggests that the burdens will always rest on the attorney in any dispute with a client in these matters.

In any civil proceeding between a lawyer and a client or their successors, the lawyer has the burden of persuading the tribunal that requirements stated in this Section have been satisfied. [415] In a discipline case, once proof has been introduced that the lawyer entered into a business transaction with a client, the burden of persuasion is on the lawyer to show that the transaction was fair and reasonable and that the client was adequately informed. Restatement, supra, § 126, com. a.

In approving the bartering of stock for legal services, the Ethics Committee had a few similarly sobering thoughts.

The ABA [opinion] noted in passing that if the client challenges the transaction it “remains voidable in a civil suit.” In fact, New Hampshire appears to follow the almost universal rule that establishes a presumption that transactions with clients are voidable.

Whipple v. Barton, 63 N.H. 613 (1885) (gift). Summarizing the law when a client challenges the transaction it “remains voidable in a civil suit.” In fact, New Hampshire appears to follow the almost universal rule that establishes a presumption that transactions with clients are voidable.

The obvious conclusion to be drawn from almost two centuries of American decisions is that an attorney rarely can prove there was compliance with the fiduciary obligations in business transactions with the client. The lesson to be learned is that, when the attorney and client become parties to a transaction, the requisite independent advice is best furnished by another unrelated lawyer.

Ronald E. Mallen and Jeffrey M. Smith, Legal Malpractice § 14.22 (4th ed. 1996). When the transaction is voided, the client may rescind the transaction or recover damages.

Courts usually order the remedy that is “most economically beneficial to the client.” Id at § 14.23.


Even in New Hampshire, the situation can get messy if problems arise. In Becksted v. Nadeau, 155 N.H. 615 (2007), a dispute arose between a lawyer and carpenters who had worked on the lawyer’s office. The lawyer offered to write off the cost of legal services provided in exchange for the carpenters writing off their bill. The dispute went first to the Attorney Dispute Resolution Committee, and ended up in superior court when the carpenters filed a mechanics lien. The dispute also made its way to the Professional Conduct Committee where the lawyer received a Public Censure and agreed to resign from the New Hampshire Bar. Nadeau advs. Becksted, 904-048 (2009).

CONCLUSION: The lawyer will need to comply with all the provisions of NRPC Rule 1.8(a), including the requirement to advise the client in writing of the desirability of seeking the advice of independent legal counsel, in any agreement to exchange goods or services for legal fees entered into at the outset of legal representation or during the course of such representation. Even if the lawyer strictly complies with Rule 1.8(a), however, the courts may view the transaction as voidable if the client later feels aggrieved by the transaction.

NH RULES OF PROFESSIONAL CONDUCT:

Rule 1.8

Rule 1.8(a)

NH ETHICS COMMITTEE OPINIONS AND ARTICLES:

“Taking Stock in Your Client As Legal Fees Or An Investment,” Practical Ethics Article (November 8, 2000); SUBJECTS:

Barter Business transaction with a client Conflict of Interest Fees Standard commercial transaction Voidable transaction

By the NHBA Ethics Committee This opinion was submitted for publication to the NHBA Board of Governors at its November 16, 2017 meeting.

MEMBER SERVICES

PRACTICE MANAGEMENT RESOURCES

• ABA Books for Bars (discount)
• Amity Insurance
• Fastcase (free access)
• TechConnect / Affinity Consulting (free consultations & tutorials)
• Clio (discount)
• ESO Sites (discount)
• Law Pay (free trial period)
• Tracers (discount)
• MyCase (discount)
• RPost (discount)
• ABA Retirement Funds Program
• CLE programs

For more information about these and other member services, visit nhbar.org/resources or contact Misty Griffith, NHBA Member Services Coordinator at memberservices@nhbar.org or 603-715-3279

John M. Lewis
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9 Gerrish Drive, Durham, NH
jmlcis@comcast.net
www.johnlewisadr.com
603-828-8744
The 2021-2022 fiscal year budget for the New Hampshire Bar Association was presented to and approved by the NHBA Board of Governors in early May.

The NHBA budget is balanced, reporting an expected .48 percent increase in revenue and expenses over the prior year’s budget.

A conservative, creative approach, along with a dedicated and motivated staff have enabled the budget to retain the capacity for member and public service – in particular, through continued support of the NH Bar Foundation, NHBA’s Law Related Education program, and NHBA’s Lawyer Referral Service –without increasing membership dues. Additionally, NHBA continues to support of the state’s Pro Bono Program administered now through 603 Legal Aid (503 Legal Aid is a result of the merger of NH Pro Bono Referral System and Lawyer Advice and Referral Center occurring June 1, 2021.)

**Budget Highlights**

NH Bar Association Budget totals $3.543 Million

**Revenue Breakdown**

- 55% - Membership Dues and Fees ($1,961,259) which is expected to increase slightly by $10,598 compared to the prior fiscal year. Net membership numbers have continued to increase by one hundred members or less over the past five years and is expected to continue to do so due mostly to the attorney waive in process.
- 33% - Registration and Fees, of which the majority is Continuing Legal Education revenue ($1,169,698)
- 7% - Publications and Merchandise Sales which includes NHBar News advertising and subscriptions ($257,380)
- 3% - Substantive Law Section Membership Revenue ($103,720)
- 1% - Other, which includes investment income, and other miscellaneous revenue ($30,168). In the previous year, NHBA received proceeds from the sale of NHBA Insurance Agency, Inc. The two-year buyout has ended.

### New Hampshire Bar Association

**PROPOSED BUDGET**

<table>
<thead>
<tr>
<th>Department</th>
<th>Personnel Costs</th>
<th>Full Time Staff Equivalent (FTE)</th>
<th>Positions All or Partially Funded</th>
<th>% Expense of Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>420,975</td>
<td>4.100</td>
<td>11.88%</td>
<td></td>
</tr>
<tr>
<td>Business Operations</td>
<td>607,177</td>
<td>8.700</td>
<td>17.14%</td>
<td></td>
</tr>
<tr>
<td>Program Development &amp; Member Services</td>
<td>455,818</td>
<td>6.200</td>
<td>12.30%</td>
<td></td>
</tr>
<tr>
<td>Marketing &amp; Strategic Communications</td>
<td>495,392</td>
<td>7.000</td>
<td>13.98%</td>
<td></td>
</tr>
<tr>
<td>Lawyer Referral Service - Full Fee</td>
<td>147,012</td>
<td>1.900</td>
<td>4.15%</td>
<td></td>
</tr>
<tr>
<td>Modest Means Referral Service</td>
<td>50,378</td>
<td>0.850</td>
<td>1.42%</td>
<td></td>
</tr>
<tr>
<td>Law Related Education</td>
<td>55,680</td>
<td>0.800</td>
<td>1.57%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Personnel Costs</strong></td>
<td>2,212,432</td>
<td>29.550</td>
<td>62.45%</td>
<td></td>
</tr>
</tbody>
</table>

**APPROVED BUDGET**

<table>
<thead>
<tr>
<th>Department</th>
<th>Personnel Costs</th>
<th>Full Time Staff Equivalent (FTE)</th>
<th>Positions All or Partially Funded</th>
<th>% Expense of Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>407,257</td>
<td>4.100</td>
<td>11.55%</td>
<td></td>
</tr>
<tr>
<td>Business Operations</td>
<td>626,444</td>
<td>8.700</td>
<td>17.77%</td>
<td></td>
</tr>
<tr>
<td>Program Development &amp; Member Services</td>
<td>438,803</td>
<td>6.200</td>
<td>12.45%</td>
<td></td>
</tr>
<tr>
<td>Marketing &amp; Strategic Communications</td>
<td>526,182</td>
<td>7.000</td>
<td>14.92%</td>
<td></td>
</tr>
<tr>
<td>Lawyer Referral Service - Full Fee</td>
<td>126,266</td>
<td>1.900</td>
<td>3.58%</td>
<td></td>
</tr>
<tr>
<td>Modest Means Referral Service</td>
<td>54,290</td>
<td>0.850</td>
<td>1.54%</td>
<td></td>
</tr>
<tr>
<td>Law Related Education</td>
<td>50,829</td>
<td>0.800</td>
<td>1.44%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Personnel Costs</strong></td>
<td>2,230,071</td>
<td>29.550</td>
<td>63.25%</td>
<td></td>
</tr>
</tbody>
</table>

**Benefit reduction of $57,557**

**Budget Year Ended, May 31, 2022**

<table>
<thead>
<tr>
<th>Department</th>
<th>Personnel Costs</th>
<th>Full Time Staff Equivalent (FTE)</th>
<th>Positions All or Partially Funded</th>
<th>% Expense of Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>1,961,259</td>
<td>1.900</td>
<td>11.88%</td>
<td></td>
</tr>
<tr>
<td>Business Operations</td>
<td>1,169,688</td>
<td>1.900</td>
<td>17.14%</td>
<td></td>
</tr>
<tr>
<td>Program Development &amp; Member Services</td>
<td>257,380</td>
<td>1.900</td>
<td>12.30%</td>
<td></td>
</tr>
<tr>
<td>Marketing &amp; Strategic Communications</td>
<td>20,543</td>
<td>1.900</td>
<td>13.98%</td>
<td></td>
</tr>
<tr>
<td>Lawyer Referral Service - Full Fee</td>
<td>133,888</td>
<td>1.900</td>
<td>1.900</td>
<td></td>
</tr>
<tr>
<td>Modest Means Referral Service</td>
<td>50,378</td>
<td>1.900</td>
<td>1.57%</td>
<td></td>
</tr>
<tr>
<td>Law Related Education</td>
<td>55,680</td>
<td>1.900</td>
<td>1.57%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Personnel Costs</strong></td>
<td>3,542,768</td>
<td>1.900</td>
<td>62.45%</td>
<td></td>
</tr>
</tbody>
</table>

**Budget Year Ended, May 31, 2021**

<table>
<thead>
<tr>
<th>Department</th>
<th>Personnel Costs</th>
<th>Full Time Staff Equivalent (FTE)</th>
<th>Positions All or Partially Funded</th>
<th>% Expense of Total Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>1,950,661</td>
<td>1.900</td>
<td>11.55%</td>
<td></td>
</tr>
<tr>
<td>Business Operations</td>
<td>1,197,901</td>
<td>1.900</td>
<td>17.77%</td>
<td></td>
</tr>
<tr>
<td>Program Development &amp; Member Services</td>
<td>252,650</td>
<td>1.900</td>
<td>12.45%</td>
<td></td>
</tr>
<tr>
<td>Marketing &amp; Strategic Communications</td>
<td>24,000</td>
<td>1.900</td>
<td>14.92%</td>
<td></td>
</tr>
<tr>
<td>Lawyer Referral Service - Full Fee</td>
<td>126,843</td>
<td>1.900</td>
<td>3.58%</td>
<td></td>
</tr>
<tr>
<td>Modest Means Referral Service</td>
<td>54,290</td>
<td>1.900</td>
<td>1.54%</td>
<td></td>
</tr>
<tr>
<td>Law Related Education</td>
<td>50,829</td>
<td>1.900</td>
<td>1.44%</td>
<td></td>
</tr>
<tr>
<td><strong>Total Personnel Costs</strong></td>
<td>3,525,669</td>
<td>1.900</td>
<td>63.25%</td>
<td></td>
</tr>
</tbody>
</table>
New Hampshire Bar Association Budget for Fiscal Year 2022

**Expense Breakdown**

- Program Expenses are 19 percent of the total expenditure budget and relate to member and public programming and services ($675,296).
- Overhead costs are 19 percent of the total expenditure budget, with the largest expenses being facilities, information technology services/data processing and credit card processing fees ($655,040).
- The largest expense for most service-intensive organizations, are personnel (salary, wages, and benefits) and facility costs. Virtually all activities at the Bar Center are service-related; hence the single-largest expense in the budget is staffing to provide programs and services at 62 percent of the total expenditure budget ($2,212,432).

As noted above, the NHBA supports many affiliates that share the Bar Center offices to include, NH Bar Foundation and NH Minimum Continuing Legal Education (NH Supreme Court Rule 53). In addition, NHBA staff also support the Public Protection Fund Committee by administering NH Supreme Court Rule 55, NH Supreme Court Rule 50-A administering the annual Trust Account Compliance Form filing and NH Lawyer Assistance Program with marketing and other administrative endeavors.

**Summary of Significant Budget Changes:**
- Overhead expenses are 19 percent of the total expenditure budget, with the largest expenses being facilities, information technology services/data processing and credit card processing fees ($655,040).

**New Hampshire Bar Association 2021-2022 Budgeted Revenue Sources**

- **Membership Dues & Delinquency Fees:** 55%
- **Registrations/Fees:** 33%
- **Sections:** 3%
- **Grants/Program Funding:** 1%
- **Sales:** 7%
- **Interest/Other:** 1%

**New Hampshire Bar Association Largest Expenditure, Excluding Personnel Costs**

<table>
<thead>
<tr>
<th>Category</th>
<th>Budgeted Cost</th>
<th>Expense Funded by Grant or Award</th>
<th>% Expense of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Overhead Expenses</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupancy (mortgage interest, CAM, maintenance)</td>
<td>242,127</td>
<td>197,137</td>
<td>6.83%</td>
</tr>
<tr>
<td>Miscellaneous (includes credit card processing fees)</td>
<td>139,615</td>
<td>92,329</td>
<td>3.94%</td>
</tr>
<tr>
<td>Information Services/Data Processing</td>
<td>97,023</td>
<td>98,236</td>
<td>2.74%</td>
</tr>
<tr>
<td>Professional Fees (includes annual financial audit)</td>
<td>53,597</td>
<td>41,510</td>
<td>1.51%</td>
</tr>
<tr>
<td>Postage</td>
<td>43,318</td>
<td>42,398</td>
<td>1.22%</td>
</tr>
<tr>
<td><strong>Program Expenses</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Midyear Meeting Expenses</td>
<td>64,782</td>
<td>63,960</td>
<td>1.15%</td>
</tr>
<tr>
<td>Member Services Affinity Partners</td>
<td>62,892</td>
<td>72,288</td>
<td>1.13%</td>
</tr>
<tr>
<td>Printing &amp; Materials (includes CLE materials for members)</td>
<td>61,270</td>
<td>70,817</td>
<td>1.08%</td>
</tr>
<tr>
<td>Publicity &amp; Advertising (including CLE advertising)</td>
<td>40,162</td>
<td>40,365</td>
<td>1.01%</td>
</tr>
<tr>
<td>Program Development &amp; Training</td>
<td>38,240</td>
<td>23,740</td>
<td>1.01%</td>
</tr>
<tr>
<td>Practical Skills Member Workshops</td>
<td>35,952</td>
<td>39,687</td>
<td>1.01%</td>
</tr>
<tr>
<td><strong>Total Percentage of Budget</strong></td>
<td></td>
<td>197,137</td>
<td>6.83%</td>
</tr>
</tbody>
</table>

**Notice of Budget Information Session – All Members Welcome**

Please join us at the virtual Budget Information Session to be held on Wednesday, September 1, 2021, at 3:30 p.m. for questions and discussion regarding this fiscal year’s budget. Please respond to nhbainfo@nhbar.org of your intent to attend. Instructions to join the meeting will be forwarded accordingly. Any questions or comments in advance of the meeting may be emailed to NHBA’s Associate Executive Director for Operations, Paula D. Lewis, at plewis@nhbar.org.
The Words That Made Us: America’s Constitutional Conversation, 1760-1840

By Akhil Reed Amar

Basic Books (2021), Hardcover, 832 pages

Reviewed by Patrick Arnold

In late December 1760, loyal British Americans in provincial Massachusetts first toasted the accession of George III to the throne. Colonial life and business continued—more or less—as usual. Within 15 years, however, colonists would be in full rebellion against the monarchy and British law. In the years following the revolution, jurists and political leaders would struggle to craft a workable government for the new republic. In The Words That Made Us: America’s Constitutional Conversation, 1760-1840, Akhil Reed Amar explores the challenges, political and legal ideologies, and characters that yielded hallmarks of the American legal system we know today. A professor of law and political science at Yale, Amar brilliantly synthesizes political history with legal analysis to offer new insight into early American constitutionalism.

In undertaking the endeavor, Amar accurately observes that many American historians have turned away from political history in recent years. Moreover, most scholarship in the field covers a decade or two at most, rather than searching for continuous threads across generations. Popular history titles also tend to overlook major legal issues in favor of a more compelling story. The author takes these trends into account in this behemoth work—the first in many years, however, colonists would be in full rebellion against the monarchy and British law. In the years following the revolution, jurists and political leaders would struggle to craft a workable government for the new republic.

The first part examines the “seeds” of revolution, resistance, and ultimately independence. The second part examines the drafting and adoption of the U.S. Constitution, including arguments for and against certain provisions, practical considerations, and, of course, politics. The third and longest part of the book combines biographical narrative with constitutional analysis of many issues that developed in the early republic’s jurisprudence. The legal issues faced in the early republic were vast. At nearly every turn, a decision had to be made whether to follow prevailing European thought and British tradition or forge new precedent for a new nation. Amar guides readers through the debates of lesser known (but just as profound) issues in the development of the document itself and its amendments. Should elected leaders have broader latitude for political speech than the public at large? What is and ought to be the proper role of judges in this new country? If things aren’t working out, how does a state’s right to secede fit into the constitutional conversation? Readers may be surprised by explicit debates over who should participate in the constitutional conversation. The framers made a conscious, groundbreaking decision to involve the American populace. Among other things, the framers were keenly concerned with continuity. How could they ensure institutional credibility and preservation for future generations? They needed public buy-in. In years that followed, many states followed the federal framework in crafting their own constitutions. By the turn of the 19th century, the focus had shifted from what should be written to what had been written and what those words meant.

“Amar dispels mythical portrayals of the founding fathers in favor of more accurate, human depictions.”

In addition to the familiar cast of early American characters, the author introduces readers to many overlooked figures who played pivotal roles. Attorney James Otis, for example, undertook a case in 1761 on behalf of local merchants challenging the legality of Writs of Assistance under British law. The case—and Otis’ arguments in particular, had a strong impact on an impressive young lawyer from Braintree, Mass., by the name of John Adams, (later the second U.S. president) who came to watch the case unfold. Readers will also learn about Judge Thomas Hutchins, a prominent loyalist who, in Amar’s view, offered the best voice for arguments against American independence. Readers are also introduced to federal justices of the early 19th century, including John Marshall and Joseph Story, who rarely receive proper credit for their role in strengthening the constitutional system. For this reader, the most compelling aspects of the book surround the individual players, their relationships, and their evolving views. Amar dispels mythical portrayals of the founding fathers in favor of more accurate, human depictions. History is written by the winners, and among them, those with better publicists. It nonetheless tells a story of human beings responding to time and circumstance. Before they were statesmen, the founders were fallible political leaders with their own motivations, biases, and life experiences. Benjamin Franklin—like most of his contemporaries—was not a lifelong proponent of independence. What sent him over the edge to embrace revolution? Amar answers this question for many titans of our American origin story. Discussions on the framers’ personal dynamics with each other are superbly researched. Though its daunting length requires a commitment to complete, this book is a solid title for the intersection of law and American history. Amar’s allegiance to presenting multiple sides of the narrative give us a more honest appraisal of themes, interests and personalities. It presents this great movement in motion.

Patrick Arnold focuses his practice on litigation, criminal defense, and business matters.
CONTINUING LEGAL EDUCATION

GUIDE

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Every course we offer has been checked by our Professional Development Team for quality and price. We also help our sections develop CLE content throughout the year.

AUGUST 2021

THU, AUG 26 – Noon – 1:00 p.m.
Logic, Argumentation and Persuasion 4: Key Elements of a SuperPower Persuasion w/Lenne Espenschied
- Webcast: 60 min.

SEPTEMBER 2021

TUE, SEP 14 – 9:00 a.m. – 3:15 p.m.
Business Litigation
- Webcast: 300 min. incl. 45 ethics/prof. min.

THU, SEP 16 – Noon – 1:00 p.m.
Contract Drafting is Like...a Decathlon w/Lenne Espenschied
- Webcast: 60 min.

THU, SEP 30 – Noon – 2:00 p.m.
Contract Drafting Essentials: Tips and Techniques for Better Contracts w/Lenne Espenschied
- Webcast: 120 min.

OCTOBER 2021

FRI, OCT 1 – 9:00 a.m. – 4:00 p.m.
Planning and Zoning 101
- Webcast: 360 min.

TUE, OCT 5 – Noon – 1:00 p.m.
Juror Investigation Using Social Media (Ethics Opinion 2019-20/03)
- Webcast: 60 ethics/prof. min.

THU, OCT 7 – Noon – 1:00 p.m.
Don’t Flub the Math! w/Lenne Espenschied
- Webcast: 60 min.

THU, OCT 21 – Noon – 1:00 p.m.
20/20 Ethics: Clear Vision for Transactional Lawyers w/Lenne Espenschied
- Webcast: 60 ethics/prof. min.

TUE, OCT 28 – 9:00 a.m. – 4:00 p.m.
Developments in the Law 2021
- Webcast: 360 min., incl. 60 ethics/prof. min.

CONTRACT DRAFTING

with Lenne Espenschied

THU, AUG 26 – Noon – 1:00 p.m.
4 Key Elements of a SuperPower Persuasion
The power of persuasion enables virtually all other pursuits, so it ranks high on the list of preferred superpowers for lawyers. In this program, Part 4 of Logic, Argumentation, and Persuasion, we’ll showcase four different methods to enhance your power of persuasion.

THU, SEP 16 – Noon – 1:00 p.m.
Contract Drafting is Like...a Decathlon
This unique, upbeat program draws analogies to other strenuous pursuits to illustrate how specific strategies and techniques are advantageous in contract drafting.

THU, SEP 30 – Noon – 2:00 p.m.
Contract Drafting Essentials: Tips & Techniques for Better Contracts
In this fast-paced two-hour CLE, learn practical contract drafting essentials you will apply throughout your entire practice.

THU, OCT 7 – Noon – 1:00 p.m.
Don’t Flub the Math!
This program will help you draft mathematical provisions more confidently and avoid common mistakes.

THU, OCT 21 – Noon – 1:00 p.m.
20/20 Ethics: Clear Vision for Transactional Lawyers
In this program, we’ll provide timely guidance regarding 1) the ABA Standing Committee on Ethics & Professional Responsibility’s Legal Ethics Opinion 493 and Model Rule 8.4(g); 2) LEO 483 & Model Rule 1.4(a)(3); and 3) LEO 482 and Model Rule 1.15.

HOW TO REGISTER

All registrations must be made online at https://nhbar.inreachce.com
Questions?
Contact Cheryl Moore at cmoore@nhbar.org

Learn@Lunch

Co-sponsored with the NHBA’s Ethics Committee

Juror Investigation Using Social Media
TUE, October 5 – Noon – 1:00 p.m.
- Webcast: 60 ethics/prof min.

Border Law & Confidential Client Information
WED, November 3 – Noon – 1:00 p.m.
- Webcast: 60 ethics/prof min.

The NHBA•CLE program is once again offering its CLE Club for NH Bar Members!
Sign up now!
For more information and terms & conditions, go to https://www.nhbar.org/nhbacle/nhbacle-club

Live Programs • Timely Topics • Great Faculty • Online CLE • CLEtoGo™ • DVDs • Webcasts • Video Replays • and More!
BUSINESS LITIGATION

TUE, SEPTEMBER 14, 2021
9:00 a.m. – 3:15 p.m. • Webcast Only • 300 min., incl. 45 ethics/prof.

This program features a variety of topics pertaining to business litigation including non-competition and non-solicitation agreements; trade secrets; computer forensic issues; electronic evidence issues; ethical issues in business litigation; related criminal and government investigation issues; and business court update. A must for those attorneys whose practice touches upon any area of business litigation!

Faculty
- Arnold Rosenblatt, Program Chair/CLE Committee Member, Cook, Little, Rosenblatt & Manson, plc, Manchester
- Hon. David A. Anderson, Hillsborough County Superior Court Northern District, Manchester
- James Berriman, XACT Data Discovery, Boston, MA
- Peter G. Callahan, Prent Flaherty Beliveau & Pachios, PLLP, Concord
- Samantha D. Elliott, Gallagher, Callahan & Gartrell, PC, Concord
- Jennifer L. Parent, McLane Middleton PA, Manchester
- Edward J. Sackman, Bernstein, Shur, Sawyer & Nelson, PA, Manchester

DEVELOPMENTS IN THE LAW 2021

THU, OCTOBER 28, 2021
9:00 a.m. – 4:00 p.m. • Webcast Only • 360 min., incl. 60 ethics/prof.

This popular annual CLE seminar is a must for all practicing New Hampshire attorneys. In a convenient one-day format, this program offers a complete survey of important legal developments affecting NH practice.

Learn from those in the know about significant legislative, rule, case law and procedural changes in major practice areas.

Faculty
- Corey M. Belobrow, Program Chair/CLE Committee Member, Maggiotto, Friedman, Feeney & Fraas, PLLC, Concord
- Christine S. Anderson, Ansell & Anderson, PA, Bedford
- Thomas M. Clissord, Jackson Lewis, PC, Portsmouth
- Tracey G. Cote, Shaheen & Gordon, PA, Concord
- Timothy A. Gudas, NH Supreme Court, Concord
- Christopher M. Johnson, NH Appellate Defender Program, Concord
- Gregory A. Moffett, Prent Flaherty Beliveau & Pachios, PLLP, Concord
- Thomas J. Pappas, Primmer, Piper, Eggleston & Cramer, Manchester
- William C. Satrely, Prent Flaherty Beliveau & Pachios, PLLP, Concord
- Laura Spector-Morgan, Mitchell Municipal Group, PA, Laconia
- Roy W. Tilley, Bernstein, Shur, Sawyer & Nelson, PA, Manchester

PLANNING AND ZONING 101

FRI, OCTOBER 1, 2021
9:00 a.m. – 4:00 p.m. • Webcast Only • 360 minutes

Zoning and planning law is the bread and butter of the land use practitioner. Whether you’re new to the practice or are an experienced attorney looking to refresh your knowledge of the subject area, this entry level CLE is for you!

Topics will include:
- board makeups
- procedures
- substance of both board’s essential duties and more!

Who Should Attend?
Practitioners looking to expand their knowledge of the planning and zoning basics, land use non-lawyer professionals and town staff.

Faculty
- Laura Spector-Morgan, Program Chair/CLE Committee Member, Mitchell Municipal Group, PA, Laconia
- Kevin K. Baum, Hoefle Phoenix Gormley & Roberts, PLLC, Portsmouth
- Natch Greyes, New Hampshire Municipal Association, Concord
- James W. Kennedy, III, City of Concord, Concord
- Gregory E. Michael, Bernstein, Shur, Sawyer & Nelson, PA, Manchester

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Details coming soon!

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October 26
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November 5
Nuts and Bolts of Family Law

November
39th Annual Tax Forum

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*Please let us know if we have left you off our list in error. We apologize for any oversights.
Heat islands, lack of greenspace, and social vulnerability

People living in areas lacking green spaces are more susceptible to the heat-island effect and these areas are also places where the median income is lower and social vulnerability is higher.

The CDC’s social vulnerability index uses U.S. Census data to determine the relative social vulnerability of every census tract in the U.S. The SRI ranks each tract on 14 social factors and groups them into four related themes: socioeconomic status, household composition and disadvantage, minority status and language, and housing and transportation.

The index ranges from zero to one, with one being the most vulnerable. Vulnerability factors most relevant to heat and health include: percent of population over 65, percent of population below the poverty line; percent population with no health insurance; and the overall social vulnerability index.

A number of areas in New Hampshire score at or near one, including portions of Concord, Manchester, Nashua, Coos County, and Cheshire County.

According to New Hampshire’s Division of Public Health Services, the number of heat related illnesses leading to emergency department (ED) visits begins to increase on days above 75°F. From May-Sept (2000-2009), for instance, Manchester and Nashua recorded 640 and 660 excess ED visits, respectively.

In early July, the Bar News requested current data from DHHS on several issues related to heat-related illnesses, including the number of heat-related ER visits by hospital across the state. In early August, a spokesperson at DHHS said that the request could not be fulfilled due to the increased demands of the COVID-19 pandemic.

The most vulnerable living in urban areas must also contend with heat islands – which exacerbate heat-related illnesses. These are urbanized areas that experience higher temperatures than those around them because they tend to contain dense structures, as well as roads, and parking lots, that absorb and then re-emit the sun’s heat more than natural landscapes do.

Irwin points out that social vulnerability – which includes poverty as well as heat problems – often makes it difficult for people to organize on a community level.

The people who are most often affected have the least bandwidth and capacity with everything else going on in their life to realize things could be better in their community and to organize and solve their challenges,” Irwin said. “Just as we saw communities of color experiencing harm as a result of the COVID-19 pandemic, that could be true with the impacts of climate change as well unfortunately.”

Community organizer Arnold Mikolo, who works with the CLF on creating more greenspaces in Manchester, said low-income neighborhoods in the city with a lack of access to healthcare, a higher number of smokers and other comorbidities, are at an increased risk of heat-related illness.

Finding ways for people to cool off in cities like Concord and Manchester is not a problem for those in sections of the city with tree cover and air conditioning. A lot of the houses in sections of Manchester don’t even need to turn on AC.

Mikolo said he wants to remind people that neighborhood hotspots where heat isn’t as much of a problem require planning and investment.

Climate change, average rising temps, are here to stay

State Climatologist, Mary Stampone, who is a professor of geography at UNH, said temperatures in New Hampshire are rising just as they are everywhere else.

One of the climate scientists are observing, she said, is that nighttime temperatures are rising at a greater rate than daytime temperatures regionally; a July 1901 to July 2020 study found that in June, July, and August, temperatures are all rising significantly at night. For July, Stampone said temperatures are up 0.3°C at the day and 1°C during the day.

“I have seen that in the last 50 years,” Stampone said.

And looking more closely at nighttime temperatures, she added, is important because this is the time when people cool off.

“Get informed by the experts rather than politicians,” she said. “But we also depend on politicians to have environmentally friendly laws, make those in charge be responsible for not making policies and decisions that the public has a lot of power.”

Addressing problems related to climate change also requires an understanding of what the effects are and then determining what can be done to help the most vulnerable.

In the climate world, she said, the two key words are mitigation and adaptation.

“For mitigating, let’s try to fix some of the problems we’ve caused. For adaptation, let’s try to figure out what to do in order to deal with the problems we’ve caused.”

Immigrant housing, drafty in the winter, hot in the summer

Managing Director of the Immigration Institute of New England, Henry Harris, said Manchester neighborhoods – where the majority of refugees and immigrants live – have limited greenspace.

“Many describe the buildings in those neighborhoods lacking greenspace as old and often needing weatherization updates.

“They’re drafty in winter and hot in summer,” he said.

“Even planned neighborhoods, because of the amount of time it takes to grow trees, green space hasn’t developed enough to provide adequate shade. And in a lot of these older neighborhoods, the trees are aging out. Good luck finding an actual maple on Maple Street.”

With less than one percent vacancy rate in southern New Hampshire, Harris said placing clients in apartments can be difficult.

“People try to obtain air conditioners when they can but when you’re on a really tight budget it’s hard to do.”

Asked what some solutions might be regarding heat-related illnesses Harris says it begins with infrastructure. And this includes the creation of more greenspaces.

The problem, he pointed out, is that greenspaces take time.

“It takes a long time to grow trees. Landlords are going to have to accept that and they don’t have money.”

He suggested the use of Mesh sunscreens which also work like modern art, stretching over certain areas allowing the wind to blow through to them.

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Solutions must focus on resources for vulnerable population

When it comes to solutions to the problem of heat, Stampone believes more resources should be invested in vulnerable populations and that an environmental justice approach, where benefits and burdens are fairly distributed, should be adopted.

“We need to decarbonize globally. The mitigation needs to happen,” she added, saying that, in the meantime, “adaptation and cooling centers are a greater investment in cooling, as well as providing vouchers for air conditioning and increased access to cool spaces.”

Over time, she says solutions include increasing green spaces and access to green spaces as well as tree maintenance.

“Trees and other vegetation are very natural coolers. And they are more of a community benefit and a long term one, so they’re more sustainable than giving people a bunch of air conditioners.”
Concerned Citizens of Tillery was a community of African American residents focused on understanding the environmental and health risks associated with CAFOs. Wing’s research focused on hog farms and revealed that the water, air, and the quality of life for those living nearby, had been degraded.

“The worst thing I remember is the smell driving by these places, sometimes even 10 miles away,” Aydt said. “There’s one thing I’ll never forget. Before I knew what the smell was I had stopped for gas and I asked about it. The guy at the gas station said, ‘that’s the smell of someone’s cow’s rowdy. There are families that are making people who don’t live here really, really rich.’”

This observation stuck with Aydt and served as an example of how environmental health issues are related to social and economic inequities.

Aydt said Wing set up air quality monitoring stations around the CAFO and studied blood pressure increases, finding many aspects of people’s health were being negatively affected.

“More communities of the mainstream medical community started taking the issue more seriously after this research,” Aydt said. “It was a turning point from a community organizing perspective because race is the number one predictor of health outcomes.”

In 2009-2010, Aydt collaborated with Ammie Jenkins, Director of the Sandhills Family Heritage Foundation in Spring Lake, NC., to focus on refugee resettlement neighborhoods in Spring Lake. She said. “It was a turning point from a community organizing perspective.”

The project utilized a strengths based approach in the Sprig Lake community, where the leading causes of death–heart disease, cancer, asthma, diabetes, and stroke–had a 32.4% prevalence rate compared with the state’s 22% rate.

Aydt was also part of a PhotoVoice project in Manchester funded by the Robert Wood Johnson Foundation and another in 2012. The study, which focused on refugee resettlement neighborhoods in Manchester’s “East” and “West” sides found higher rates of chronic diseases compared to city-wide and statewide rates. In those areas, at the time, 23%-36% of the population was below the poverty line.

Aydt says the 2018 PhotoVoice study was conducted with older adults in the greater Manchester region.

“I found a lot of interesting issues pertaining to transportation and greenspace as well as services for persons with disabilities,” she says, adding that this study will “hopefully” be published in an academic journal soon.

Environmental policies in New Hampshire lack the teeth of substantive statutes

In 1994, Constituent Concerns created a historic executive order on environmental justice. “The Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” the order required the federal government to conduct a major federal action on environmental justice in the United States, requiring all federal agencies to make environmental justice part of their mission.

The purpose of the executive order was to focus federal attention on the environmental health effects of federal actions on minority and low-income populations toward the goal of achieving environmental justice for all communities.

Another environmental justice executive order was signed in Jan., 2021, by President Joe Biden. The Justice40 initiative seeks to direct 40 percent of his administration’s climate investments to disadvantaged communities.

“The real issue is that there is no EJ statute in NH,” she said. “In some cases there are principles where the DES makes reference to environmental equity, but it’s not being applied in rulemaking proceedings or for environmental justice being proposed, or how they are operating in low-income communities, indigenous or new-American communities.”

A great EJ bill in Massachusetts while Granite State waits

In Massachusetts, a recent climate law, with a section on environmental justice, was signed in January with the goal of Creating a Next Generation Roadmap for Massachusetts Climate Policy.

Because of this bill, Rubin says: “In Massachusetts we now have a definition of EJ populations that reflects a data-driven approach. It identifies, from a demographic perspective, where the burdens are and who is being affected in historically marginalized communities.”

Rubin says the law acknowledges and identifies communities of color, limited English-speaking neighborhoods and neighborhoods that are also low-to-moderate income.

“In addition to identifying these communities, it’s the law baked into the environmental review process of what the EJ implications are. In particular it requires the integration of a cumulative impact assessment into the review. That’s something that we really need before.”

This cumulative impact assessment will allow groups like the CLF to look at other facilities nearby that are contributing pollution, and to raise questions with the development, about environmental benefits such as parks, tree cover, and access to renewable energy options to lower utility bills.

“It’s a great bill, although not to certainly pushing for more to happen,” Rubin says.

Creating an EJ statute in New Hampshire

A typical environmental impact process involves determining whether a facility is meeting clean air or clean water act requirements, Rubin says. But this process does not meet the needs “or offer the strict scrutiny that would be needed for EJ implications.”

Rubin offered the example of a fossil fuel plant proposed in New Hampshire. Environmental impact was found to be just under the threshold of the clean air act requirements. Without a law, she says, this is not an EJ issue because the impact statements are not broad enough to take a variety of peripheral concerns into consideration.

To do this further questions would need to be asked, such as:

“What are the asthma rates near that site? Highways, ports area? A cumulative-acts perspective looks at what all of the different burdens are, and how they relate to the burden, then, are those burdens able to be minimized?”

Typical environmental laws are designed, firstly to avoid impacts, Rubin explains.

“If that isn’t possible you minimize, and then mitigate. EJ is an approach that builds off of traditional environmental law and EJ law is aimed at getting us all along to say, ‘if there are these burdens the project cannot move forward.’”

Creating an EJ statute in New Hampshire would allow groups like the CLF to look at other facilities nearby that are contributing pollution, and to raise questions with the development, about environmental benefits such as parks, tree cover, and access to renewable energy options to lower utility bills.

“We would stick to a demographic perspective because race is the number one predictor of where polluting facilities tend to be located,” she said. “We’re in a good moment nationally. Not only is there this racial justice reckoning but we have a federal administration that is one of the most open to talking about EJ that we’ve ever seen.”

Statute or no Statute, EJ is already happening in New Hampshire

If an EJ statute in the Granite State begins with fostering and supporting community leaders and defining at-risk populations so politicians and industry leaders have data to work with, CLF Community Organizer Arnold Mikolo, could be a sign of good things to come.

Like the work Aydt did in N.C., Mikolo, working with other community organizers, has been identifying communities that are benefiting from traffic relief measures and which communities have access to bike lanes and which do not.

The goal is to educate and empower individuals in communities to address issues of concern, including heat-related illnesses and the inequities that are the root of the problem.

Recently, Mikolo has also been involved in the creation of a green space and community gathering campaign as part of CLF’s advocacy effort.

“The ultimate goal is to empower communities with knowledge and awareness of the tied-in with transportation and public health intersects with transportation and public health and housing,” he said.

“At this stage it’s about finding out who is willing to lead these efforts. Mikolo wants to remind people that neighborhoods with lots of trees didn’t happen overnight.

The goal, he said, is for low-income and diverse communities to have the benefit of nature.

“First we need connected neighborhoods. As EJ advocates we come into communities to help show them the possibilities,” Mikolo said. “Not seeing trees is a testimony of their situation. Green spaces we advocated for years ago. Those trees don’t grow overnight. Most of those neighborhoods are with mortgages. People are vegetative and they have no idea in fact that this benefits the whole community and that when that happens you tend to be vocal. ‘I have children. A mortage.’ People who don’t have a home don’t have an investment. Why waste time when you might not be here next year.”

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says. “It’s gratifying in some senses to protect your client and get them the best result. The flip side is, someone is losing a business, losing a home, they’re on hard times. So, I think it’s important not to gloat when you have victories in this area.”

Born in Bath, Maine, Moffett grew up in neighboring Brunswick and attended local schools through his freshman year of high school before transferring to Lawrence Academy in Groton, Mass., where he played on a team that won an independent league championship in hockey.

Soon afterward, he started receiving inquiries from universities like Harvard, Princeton and Colgate about possible athletic scholarships, but his mother had fallen ill. Sometime during his senior year he got the news that her cancer was terminal.

“It was kind of rigged for a while,” he says. “When we were deciding about college, I got a call from the UNH coach, whom I had known from hockey camp growing up. I was thrilled. It was like manna from heaven. They wanted to give me a full scholarship to go to UNH to play hockey.”

The choice allowed him to remain closer to home and to his mother, with whom he had always had a close relationship. She died during the first semester of his freshman year, and teammates and others “really took care of me” in the dark days that followed. Moffett says.

He continued playing, and during his sophomore year UNH won the ECAC tournament and went on to the 1979 Final Four, losing the first game of the first round to Minnesota. Junior year brought another setback, when Moffett fell off a roof working a summer job for his contractor father, injured his back and began to question whether hockey was for him.

Legendary UNH hockey coach Charlie Holt rallied him. “Charlie cared more about what was going on between my ears than what was going on on the ice,” Moffett says. “After he said that, it lifted a weight. I looked at hockey more as a fun thing than a ball and chain.”

In 1981, at the end of his senior year, he played for Team USA in the world championship of hockey, alongside many players who had helped win the United States a gold medal in the previous year’s Winter Olympics.

At UNH, Moffett played with Bob Gould, Bruce Crowder and other players who went on to the National Hockey League, and was himself drafted in 1979 by the Montreal Canadiens.

Moffett says he “never really wanted to play in the NHL,” but didn’t want to disappoint his father, a “natural athlete” who was thrilled at the prospect of his son making the big time.

“My heart was not all together in it,” Moffett adds. “I enjoyed it. I’m glad I did it. I made some great life-long friends.”

He spent most of his professional hockey career on Canadiens farm teams and was named the No. 1 minor league one ga...
By Leslie Nixon

Representing workers’ compensation claimants can be a frustrating experience in today’s environment, which I believe is unfairly tilted in favor of employers and insurance companies. Despite the initial objective of workers’ compensation legislation, to be a no-fault, streamlined system to keep food on the table of injured workers and quickly get them the medical care they need to get back to work, I have too many times heard from clients that they feel like they are being treated as criminals. Between fear of insurance company surveillance, delayed payments, rude or unavailable adjusters, and microscopic scrutiny of their medical records, claimants who should not need lawyers often feel helpless to navigate the system without one. But even experienced lawyers can find themselves throwing up their hands after receiving a Department of Labor denial of a claim. Employers reduce a claimant’s benefits because he or she has some “work capacity,” even though he continues to require medical treatment and his or her own employer will not make a position available because of his or her physical limitations.

Still, there are ways a lawyer can help a claimant maximize his benefits and there are nuances of the statute a lawyer should be aware of. Because of this, most of the time when a potential client asks for my opinion or advice, I always include a request for my client’s medical records. However, in many cases where a narrative is required, it may be awkward for a lawyer or someone who has been hurt on the job and may not know what to do. If there is any question about which law is more favorable, however, you should research the other state’s statute and/or speak with a lawyer who practices in that state.

You should also make sure your client’s weekly benefit amount is correct. It is supposed to be based on his or her average weekly wage – 60 percent of that in the case of total disability, and 60 percent of the difference between 60 percent and a lesser amount the client may be receiving in a light duty position. In most instances, the average weekly wage is calculated based on his or her gross wages for 26 weeks before the injury, which the employer is supposed to promptly report on a form required by the Department of Labor. However, the employer must report up to 52 weeks if requested, and your client is entitled to a calculation based on the 26-week period most favorable to him or her – this is very helpful for hourly employees who may have more overtime at certain times of the year.

A sometimes overlooked benefit is mileage reimbursement for a claimant’s medical visits, which, in cases requiring physical therapy or other frequent treatments, can accumulate to a significant amount. Unfortunately, insurance companies are often slow to pay this benefit, and persistence may be needed on the part of the lawyer. It is also unfortunate that the law does not require payment of indemnity benefits for time lost due to therapy appointments.

An issue of whether the travel reimbursement required by the statute is limited to mileage recently arose. My client’s car failed inspection, and she was without transportation for her medical visits. I asked defense counsel if his client would arrange for transportation by a car service, Uber, or taxi, as this had been done for some of my other clients. The answer was no. To avoid this – hearing – a decision is pending. I argued that the statute is not limited to mileage reimbursement, and indeed does not even mention it – that is derived from the language of RSA 281-A:23, which requires an employer or its insurance carrier to “furnish or cause to be furnished reasonable medical, surgical and hospital services.” So furnishing medical services encompasses getting the employee to the place where services are located, and the employer is free to do that by any reasonable means available, including but not limited to, mileage reimbursement. Thus, in another case, where my client had relocated to Puerto Rico but needed to see her New Hampshire surgeon, the Supreme Court ruled that the employer was required to reimburse her airfare and hotel costs.

One of my goals in representing claimants, which I’m sure all lawyers share, is to minimize costs. My standard fee agreement, apart from giving clients the option of retaining me on an hourly basis, as required by our Code of Professional Conduct, provides that while my fee is contingent, expense reimbursement is not. The principal expense in a workers’ compensation case is going to be the cost of medical records. However, the Labor Department rules require medical providers to furnish these to the insurance carrier as a condition of getting paid, Lab 508.01, and carriers, in turn, to furnish them to the claimant or his counsel upon request. Lab 503.01(d). Thus, my initial letter of representation, copied to the Department of Labor, always includes a request for my client’s complete file, including all medical records. I also request periodic updates.

These records, however, do not usually include narrative reports from a provider which I might need if medical causation is a question at a medical endpoint (maximum medical improvement, or MMI) and a permanent impairment evaluation is needed in order to get him or her an award under RSA 281-A:32. In the latter situation, the insurance carrier is responsible for payment, but in order to expedite this benefit I often request the evaluation and report, and pay any required prepayment, then seek reimbursement from the carrier. In other cases where a narrative is required, it may be more cost-effective to wait until after the hearing to request this when a contested case is won on appeal, the insurance carrier is responsible for paying claimant’s counsel’s fees and expenses, but only those related to the appeal. You may want to refrain from requesting a narrative or deposition, therefore, until an appeal has been requested, and rely only on the provider’s office notes and workers’ comp medical form (found at https://www.nh.gov/labor/documents/medical-forms.pdf) – hopefully correctly and completely filled out – at the initial hearing.

A couple of recent decisions of which I have become aware, however, suggest a disturbing trend – a Department of Labor hearing officer ruled that, even though the claimant’s medical provider had checked the box on the workers’ compensation medical form confirming causal relationship of the treatment to the work injury, it did not satisfy the claimant’s burden. This is clearly contrary to the statute and rules – this form, required by RSA 281-A.23,(b), was developed by the Department to reduce the paperwork burden on providers while still giving insurance carriers and the Department the information needed to accept or deny a claim – and it is contrary to the case law. See, e.g. Appeal of Laura Laborgue, _ N.H. __ (2020)Failure of medical provider to submit NH workers’ compensation medical form is not fatal to claimant’s case when an appeal has been requested for treatment where it was found that treatment was reasonable and related to her injury), Petition of Jean, 139 N.H. 333 (1995)(Claimant’s burden met where provider’s note states impairment was “secondary” to work-related “back problem”). The relevant inquiry should be, not whether a provider uses the “magic words”, but whether his records reflect an opinion that his treatment was required by the work injury reported by his patient.

I hope that the recent decisions will be overturned on appeal, and the apparent trend will not continue. Workers’ compensation was not intended to be a complex system, but a lawyer who takes on representation of someone who has been hurt on the job and is depending on compensation to keep his family housed and fed should be aware of its nuances in order to provide the best representation possible.

Leslie Nixon practices in the firm now known as The Nixon Law Firm, PLLC, a firm founded by her father the late David L. Nixon. She represents clients in court and before administrative agencies in all areas of personal injury, including medical negligence, products liability, car crashes, workers’ compensation, and employment law.
Workers’ Compensation Carriers Required to Reimburse Injured Workers for Cost of Medical Marijuana

By Jared O’Connor

On March 3, 2021, the New Hampshire Supreme Court held in Appeal of Panaggio that workers’ compensation insurance carriers are required to reimburse injured workers for the cost of medical marijuana prescribed for treatment of their compensable injury. This represents the end of a near-decade of uncertainty since New Hampshire first authorized the therapeutic use of cannabis statewide in 2013 with the passage of RSA 126-X. Though, of course, the practical application of the decision remains open to some dispute.

As background, there are states that have explicitly prohibited workers’ compensation insurance carriers from paying for prescribed medical marijuana; some have done so narrowly by amending their workers’ compensation act to include the prohibition (e.g. Michigan), while others have done so more broadly by precluding any claims for reimbursement in that state’s medical marijuana enabling statute itself (e.g. Florida).

When the New Hampshire legislature passed the Therapeutic Cannabis Act, no amendments were made to the long-standing requirement in New Hampshire’s Workers’ Compensation Act that carriers are responsible to “furnish or cause to be furnished to an injured employee reasonable … remedial care” under RSA 281-A:23;1. And the Therapeutic Cannabis Act itself stated only that “nothing in this chapter shall be construed to require any health insurance provider, health care plan or medical assistance program to be liable for any claim for reimbursement for the therapeutic use of cannabis.” RSA 126-X:3;11a.

In an earlier iteration of the Panaggio case decided in 2019, the New Hampshire Supreme Court construed this language as ambiguous on the question of reimbursement. The Court did not need to reach the question whether a workers’ compensation insurer can be considered a “health insurance provider” or other named entity identified in the statute, because it interpreted the subsequent language as meaning simply that 126-X itself did not create a new affirmative obligation for any such entity to reimburse. But crucially, neither did that language disturb any preexisting statutory obligations, such as has always existed for workers’ compensation carriers to reimburse claimants for reasonable treatment causally related to their work injury.

Thus, the final issue to be resolved on remand was whether the status of marijuana as a Schedule 1 substance for purposes of the federal Controlled Substances Act (meaning its possession, manufacture or distribution is a federal crime) serves as an independent prohibition on reimbursement.

The Court’s analysis began by undertaking a tripartite federal preemption analysis to determine whether the federal Controlled Substances Act and New Hampshire’s Workers’ Compensation law could coexist on this set of facts. The Court first determined there was no “express” preemption, as Congress did not explicitly claim in the Controlled Substances Act that it was preempting state authority to legislate. Next, it suggested that there was no “field” preemption, where Congress regulates a field so thoroughly that it crowds out all ancillary state legislation; obviously the Controlled Substances Act permitted states to continue to regulate their own workers’ compensation schemes. The more difficult question was one of “conflict” preemption, which is what it sounds like. Can whatever tension exists between the existence of the Controlled Substances Act and its refusal to recognize its possession, manufacture or distribution is a federal crime) serves as an independent prohibition on reimbursement.

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Advocating for the Injured for 40 Years
A Primer on Goal Setting for Personal Injury Lawyers in the Time of Covid-19

By Kirk Simoneau

In a famous study, analyzing the goals of new Harvard MBA’s, researchers discovered that 34% of those Ivy Leaguers didn’t have specific goals, 13% had unwritten goals and only 3% had written goals and plans to accomplish them. Following up ten years later, interviewers learned the 13% with unwritten goals were earning, on average, twice as much as the 84% with no goals. The 3% who had written goals were earning, on average, ten times as much as the other 97% combined.

More recent studies have shown that written goals, reviewed regularly, are 42 percent more likely to be achieved than unwritten goals. Among other things, written goals create clarity about what we really want which, in turn, provides a filter for choosing actions as well as giving motivation and, most importantly, a reminder, with regular review, to keep us on track.

What does this have to do with personal injury law? Most personal injury lawyers don’t have written goals or plans, do you? So, given the current uncertainties in the world, there has never been a better time to start with goals in these areas:

1. Health – physical and mental

   Actionable – not, be more consistent in marketing, but write two blog posts per week – use action words not to-be verbs;

   Specific – not, I want to try more cases, but I try 6 personal injury cases a year;

   Measurable – not, make a lot of money, but make $10,000 more than last year;

   Relevant – align the goals with your other financial goals for the firm, or, even better, each individual case;

   Exciting – your goal has to excite you and be for you otherwise you won’t be motivated;

2. Financial – personal, firm and individual cases

   Ask your partners, or boss, to help you set financial goals for the firm, or, even better, each individual case;

   Talk to your CPA or financial planner – she may suggest some budget or savings goals based upon your current financial health;

   Keep a spending journal for a month - look for quick goals like cutting an unnecessary expense;

3. Work – when, where and how

   Talk to your doctor – she may suggest weight or exercise goals based upon your current health;

   Keep a food journal for a month - look for quick goals like cutting out a sugary snack;

   Ask your spouse for activity ideas you can do together which could help both your physical and mental fitness;

   Talk to a counselor, therapist or religious leader who might guide you toward a book or program to create a goal around;

   Ask yourself: What do I want to be able to do that I can’t do now and how can I get there? Am I happy with my current financial situation? Do I wish I had more security and what would that look like?

Each individual case;

As you think about work goals, you might:

As you think about health goals, you might;

Talk to your doctor – she may suggest weight or exercise goals based upon your current health;

Keep a food journal for a month - look for quick goals like cutting out a sugary snack;

Ask your spouse for activity ideas you can do together which could help both your physical and mental fitness;

Talk to a counselor, therapist or religious leader who might guide you toward a book or program to create a goal around;

Ask yourself: What do I want to physically be able to do that I can’t do now and how can I get there? Am I happy with my current fitness level? Do I wish I had more energy and what would that look like?

As you think about work goals, you might:

Talk to your CPA or financial planner – she can analyze early retirement, a lesser income or the costs of starting something new;

Keep a personal journal for a month and to see if there are clients, colleagues or others you should weed out of, or build in

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NEW HAMPSHIRE BAR NEWS
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Workers’ Compensation Coverage of Vaccine Injuries

By Heather Menezes

Vaccines are a public health necessity. The vast majority of vaccinations are given and there are no side effects. However, rarely, vaccine injuries occur. If a person is required to have the vaccination as a condition of employment and suffers an injury as a result, there is no doubt that the injury would be compensable under the Workers’ Compensation Law. However, a vaccine injury may still be compensable even if an employer does not require vaccination.

An individual who is injured by certain vaccines can seek compensation through the National Vaccine Injury Compensation Program (VICP). If a vaccine injured person consults an attorney about her rights, the attorney must inform the person of the VICP. 42 U.S.C. § 300aa-10(b) provides, “It shall be the ethical obligation of any attorney who is consulted by an individual with respect to a vaccine-related injury or death to advise such individual that compensation may be available under the program for such injury or death.” Injuries from COVID-19 vaccines are not part of the VICP but are currently covered under the Countermeasures Injury Compensation Program (CICP), which provides very limited benefits. Both programs are payors of last resort. Therefore, all other available benefits, such as workers’ compensation, should be pursued in addition to the benefits provided under the VICP or CICP.

Many employers are starting to require that their employees get vaccinated against a COVID-19 vaccine. Any injuries from an employer-mandated COVID-19 vaccine are a compensable work injury. Freedman v. Spicer Manufacturing Corporation, 338 N.H. 747 (2019). However, workers’ compensation coverage is not limited to mandated vaccinations. There are circumstances where injuries from a voluntary vaccination may be considered compensable.

An injury is compensable under the Workers’ Compensation Law if it “arises out of and in the course of employment.” Our Supreme Court has found:

- First, the claimant must prove the causal connection between the injury and the employment: that the injury resulted from a risk to which the employment subjected him or her, and thus arose out of employment. Second, the claimant must show that the injury arose in the course of employment: that the injury occurred within the time and space boundaries of employment, and during an activity whose purpose was related to employment.
- The fact that a claimant “was not actually engaged upon the work she was hired to perform does not preclude application of the statute.”
- “Rather, injuries which result from the conditions and obligations of employment are compensable, including injuries which occur during an activity of a personal nature, not forbidden and reasonably expected, and a natural incident of employment.
- Courts in other jurisdictions have found that even injuries from voluntary vaccinations are compensable. For example, in Friedman v. Spicer Manufacturing Corporation, the Court found that death following voluntary vaccination during the 1918 Influenza Pandemic was compensable. Courts have found vaccine injuries compensable where there is a combination of strong urging by the employer and a mutual benefit to the employee and employer from the vaccination. In Sainting v. Steinbach, the New Jersey Superior Court found injuries from a voluntary smallpox vaccination compensable. In that case, the Court observed that, during a smallpox epidemic, the employer distributed the following notice to its employees:

> On April 22, 1947, we will provide free inoculation to all those who choose to be immunized against smallpox. We are sure that everyone is aware of the current spread of smallpox and we strongly urge that you take advantage of this service, which we are glad to provide in the interest of your health.

The claimant was a department store employee who suffered permanent injuries as a result of the vaccination. The Court found the vaccination was a mutual benefit because “it aided in the prevention of smallpox within the employee group” and “protected the employer against possibly disastrous business consequences.” The Court further found, “it would be unrealistic to find that they were for the exclusive benefit of the employees and were not additionally designed to further a sound employer-employee relationship and safeguard the employer against the serious effects of a case of smallpox among its employees.”

New Hampshire has adopted the Mutual Benefit doctrine. In New England Telephone Company v. Ames, the employee sustained an injury while negotiating on behalf of the union. The Court reasoned that the union activity at issue in the case was a mutual benefit to the employee and the employer and that the injury arose in the course of employment.

Whether the employer strongly urged the vaccination may be irrelevant in cases involving health care workers. In In re Hick’s Case, the Massachusetts Appeals Court found that a health care worker who suffered optic neuritis and blindness following a voluntary influenza vaccination suffered a compensable injury. The employer, Boston Medical Center, offered voluntary vaccinations to employees on site and the employee got the vaccination on her lunch break. The employer argued that the influenza vaccination was a purely personal activity and it did not compel or strongly urge the employee to receive the vaccine. The Court rejected the employer’s argument, finding “the link between the activity and the employment is particularly strong.” Further, the Court observed, “Here, the employee was a health care worker employed by a hospital. In contrast, none of the cases requiring the employee to show either employer compulsion or

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Navigating the Legal Waters of Sexual Assault Against Vulnerable Individuals

By Anna Goulet Zimmerman and Michaila Oliveira

The call comes into your office, a potential client has been sexually assaulted and is seeking justice – either for themselves, or with the hope that they can protect others from the same fate. From the standpoint of civil litigation, few individual assailants have assets sufficient to justify pursuing a claim. In those instances where the perpetrator has few, if any, assets from which a judgment could be collected, the only justice the victim may get is if the county or state elects to pursue criminal charges.

You may also need to educate your client, who may not even realize that what was done to them was a crime or that they could file a report with the police. New Hampshire laws recognize several instances where the power dynamic between the actor and the victim is such that any sexual intercourse is a crime. RSA 632-A:2 sets forth the circumstances under which therapists, medical providers, teachers, and prison/jail psychiatric facility employees can be charged with aggravated felonious sexual assault for having sex with individuals under their care. RSA 632-A:2(h) addresses when the victim is a disabled individual who is incapable of freely consenting.

The existence of a criminal case against the assailant is just the beginning of the inquiry. In some cases, there is another individual or entity which put the assailant into the position to commit the sexual assault, which failed to protect the victim from the sexual assault, or who is otherwise responsible for the damages caused by the assailant. This might be the school that is aware of inappropriate behavior by a teacher or other employee, the employer who hires a known sex offender to care for children, the church that covered up a complaint and allowed the bad conduct to continue, or the facility with inadequate security. This inquiry is particularly relevant when dealing with vulnerable adults, who cannot always speak up for themselves, or when they do speak up, may be ignored.

Case law has recognized the vulnerability of children when entrusted to the care of schools. The New Hampshire Supreme Court has held that: “One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal opportunities for protection is under a duty to the other.” Marquay v. Eno, 139 N.H. 708, 717 (1995), quoting Restatement (Second) of Torts § 314A at 118 (1965). Thus, “schools share a special relationship with students entrusted to their care, which imposes upon them certain duties of reasonable supervision.” Id. This “special relationship” test has been extended beyond schools, to include cases “where the defendant is a common carrier, innkeeper or public utility, or is otherwise charged with a duty of public service… [or] if the defendant provides a service that is of ‘great importance to the public,’ or is ‘a matter of practical necessity’… [or] when the plaintiff is both dependent on and legally compelled to use the defendant’s services.” Ladue v. Pla-Fit Health, LLC, 173 N.H. 630, 634 (2020).

Those with physical or mental disabilities often find themselves in these types of “special relationships” with those upon whom they depend for care. Tragically, individuals with disabilities (including hearing or vision limitations, ambulatory/self-care/ independent living limitations, and cognitive limitations) are three times more likely to be the victim of rape or sexual assault than those without a disability. U.S. Department of Justice, Crime Against Persons with Disabilities, 2009-2014 – Statistical Tables, Erika Harrell, PhD, BJS Statistician, November 2016. Within this group, individuals with multiple disabilities are twice as likely to be a victim of a rape or sexual assault as individuals with one disability. Id.

If a potential client is under the care of someone else because of their disabilities, the attorney considering the case should investigate the background and qualifications of the defendant to see if they were even eligible to be a care provider. For example, He-M 1001.03 sets the requirements for individuals working in developmental service agencies, and mandates that individuals shall not be hired if they have a felony conviction or certain misdemeanor convictions. For individuals working in community residences, any misdemeanor can be a disqualification. He-M 1001.03. So, if your potential case involves an assault by a caregiver, an attorney could start their inquiry by looking not only at the conduct leading up to the sexual assault, but also into the applicable hiring standards and whether they were followed. The same type of inquiry could be made in a variety of settings to determine whether the standard of care was breached in the hiring or retention of an individual.

When considering claims it is important to understand that not all insurance policies will cover claims for sexual assault. Even if pled as negligent supervision
The Cost of Injured Children: An examination of Carrigan v. N.H. Dept. of Health and Human Services

By Scott Harris

Child abuse imposes untold suffering, both physical and emotional, on each child it impacts. According to the Center for Disease Control and Prevention, in fiscal year 2008, U.S. state and local child protective services (CPS) received more than 3 million reports of children being abused or neglected—or about 6 complaints per minute, every day. An estimated 772,000 children were classified by CPS authorities as being maltreated and 1,740 children aged 0 to 17 died from abuse and neglect in 2008.

That abuse also imposes an enormous financial cost on the public. According to a study written for the Centers for Disease Control and Prevention: “[t]he estimated average lifetime cost per victim of nonfatal child maltreatment costs later in 2010 dollars, including $32,648 in childhood health care costs; $10,530 in adult medical costs; $144,360 in productivity losses; $7,728 in child welfare costs; $6,747 in criminal justice costs; and $7,999 in special education costs. The estimated average lifetime cost per death is $1,272,900, including $14,100 in medical costs and $1,258,800 in productivity losses. The total lifetime economic burden resulting from new cases of fatal and nonfatal child maltreatment in the United States in 2008 is approximately $124 billion. In sensitivity analysis, the total burden is estimated to be as large as $585 billion.”

The economic burden of child maltreatment in the United States and implications for prevention, Fang et al, Child Abuse & Neglect 36 (2012) 156-165. This area is plainly one where investment in the face of uncontroverted evidence that the State should be spending more and err on the side of removing children from their parents where there is even a remote possibility later that more than offset the costs of intervention. And that is before considering the enormous personal cost to those kids whose potential for success in life is derailed before they even get started.

New Hampshire’s Supreme Court in Carrigan v. New Hampshire Dept. of Health and Human Servs., July 20, 2021, recently addressed the difficult question of who should decide how public resources can best be deployed in response to the policy issued underscored by statistics like those cited above. The Carrigan plaintiff, a Department employee with an insider’s view, alleged that “the State has failed to abide by its mandatory, substantive, and procedural obligations to respond to and protect children who are subject to . . . child abuse and neglect.” Carrigan also asserted that the Department had engaged in “unconstitutional budgetary decision-making in the face of uncontroverted evidence regarding the connection between the absence of resources and the inability of New Hampshire to abide by its mandated legal obligations.” Carrigan was of the opinion that the courts should not be in the business of imposing liability on the government that may force the Department’s reallocation of resources and priorities. DCYF, it argues, should not be impressed into serving as the insurer of all children’s safety. Moreover, the State argues, the imposition of liability against DCYF could, at least subtlety, encourage child protective service workers to err on the side of removing children from their parents because the law imposes upon it no duty to control the conduct of third parties to prevent them from causing physical harm to another, hence the government cannot be held liable where it fails to prevent a third party from harming a child. The child’s recourses, if any, argues the State is against the wrongdoer, often the child’s parent. Besides, the State contends, the courts should not be in the business of determining whether its policy decisions regarding the allocation of resources are prudent or sufficient to comply with legal requirements.” Thus was Carrigan’s effort to force the Department to better address child abuse and neglect squelched.

If taxpayers are without standing to force DCYF’s greater focus on the prevention of child abuse and neglect, then who has that standing, or is the only recourse political? How about the abused children themselves, do they have recourse to address the “absence of resources and the inability of New Hampshire to abide by its mandated legal obligations?” In the vast majority of such cases, where the State fails to act to protect a child, or acts ineffectually because of a lack of staff and/or training, the State’s answer is: No. The State has argued in a number of pending cases that the law imposes upon it no duty to control the conduct of third parties to prevent them from causing physical harm to another, hence the government cannot be held liable where it fails to prevent a third party from harming a child. The child’s recourses, if any, argues the State is against the wrongdoer, often the child’s parent. Besides, the State contends, the courts should not be in the business of determining whether its policy decisions regarding the allocation of resources are prudent or sufficient to comply with legal requirements.

The State argued in a number of pending cases that the law imposes upon it no duty to control the conduct of third parties to prevent them from causing physical harm to another, hence the government cannot be held liable where it fails to prevent a third party from harming a child. The child’s recourses, if any, argues the State is against the wrongdoer, often the child’s parent. Besides, the State contends, the courts should not be in the business of determining whether its policy decisions regarding the allocation of resources are prudent or sufficient to comply with legal requirements.

Putting aside general notions of standing, however, Carrigan argued that N.H. CONST. pt. 1, art. 8, allows taxpayer standing to challenge State and political subdivision approval to spend “public funds in violation of a law, ordinance, or constitutional provision” enabled her to pursue her lawsuit. The Supreme Court rejected Carrigan’s argument, reasoning that permitting a taxpayer to challenge a government action authorizing the expenditure of funds is different from allowing the courts to “audit a governmental body to determine whether its policy decisions regarding the allocation of resources are prudent or sufficient to comply with legal requirements.” Thus was Carrigan’s effort to force the Department to better address child abuse and neglect squelched.

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Goal Setting from page 32
more fully into, life;
• Ask your close friends and spouse what they think about your desire to slow down or start something new;
• Read the Bar’s new Succession Planning Guide or a law firm launching book to see what’s really involved;
• Ask yourself: Am I happy with my work situation? If I could do whatever I wanted, what would that look like and how would I get there?

Example goal: Write a new firm business plan by October 31, 2021 by researching and drafting for at least 30 minutes beginning at 5:30 pm every day.

Injuries from page 33
that the employer strongly urged its employees to receive the inoculation involved situations where the employer and the employee provide health care services to the public.22 It further found the employee’s job required direct contact with patients and “in this case, the employer is a hospital that, as a matter of law, has an interest in, and commitment to, promoting the public health.”22 The Court reasoned: “The employee’s receipt of the vaccination, which was both encouraged by BMC and offered on its premises, was consistent with her status as a health care worker providing direct patient care so as to warrant the conclusion that her injury arose out of her employment. Moreover, because the employee’s business interests, the benefit BMC received in this case was separate from and beyond “some element of mutual benefit in the form of lessened absenteeism and improved employee relations.”23

Thus, vaccinations for health care workers, strongly encouraged or not, arise out of employment because the promotion of health and prevention of spreading disease are intertwined with the employer’s business.

Workers injured by a vaccine may be entitled to workers’ compensation benefits, even if the vaccination was not mandatory. Vaccine injured health care workers have an even stronger case that their injuries are compensable because of the nature of the work that they do. This is a very fact-specific inquiry and the circumstances of the vaccination must be explored. Further, even if compensable, the attorney should consider whether there is also coverage under the VICP or CICP.

Endnotes
1. This article discusses vaccine injuries. This article in no way should be construed to advocate against getting any vaccine, including the COVID-19 vaccine. Vaccines save countless lives. If you are not vaccinated against COVID-19, please talk to your doctor and reconsider your decision.
2. See 42 U.S.C. § 300a-10, et. seq.
4. See 1 Lex K. Larson, Larson’s Workers’ Compensation, Desk Ed. § 27.03[2] (Matthew Bender Rev. Ed.) “If there is an element of actual compulsion emanating from the employer, the work connection is beyond question, as when the company requires the employee to submit to vaccination by the company’s doctor as soon as the employee is hired, or during an epidemic tells the workers that unless they are vaccinated they cannot work until the epidemic is over.”
7. Id. at 663.
8. Id. (citations omitted).
11. Id. at 99.
12. Id.
13. Id. at 101.
14. Id.
15. 124 N.H. at 662.
16. Id. at 664.
18. Id. at 828.
19. Id. at 833.
20. Id. at 834.
21. Id.
22. Id. at 835.
23. Id.

Heatier is an attorney at Shaheen and Gordon in Concord, N.H., where she represents injured individuals in a wide array of personal injury cases, including motor vehicle accidents, bicycle accidents, uninsured and underinsured motor vehicle accidents, wrongful death, workers’ compensation, medical malpractice, and vaccine injury cases.

Children from page 35
prospect of a safety risk (in order to avoid liability), thereby undermining the competing legislative goal of keeping families together, and therefore sometimes needlessly inflicting emotional distress on the removed child.

Most of the other states’ highest courts that have considered these, and other similar arguments, have sided with imposing liability against the state. Rather than framing the cause of action as one of the government failing to protect against third party malefactors, the courts find governmental liability predicated on the “special relationship” created between the state and the children who depend on it for protection. For example, in New Hampshire the law requires the report of suspected child abuse to the New Hampshire Department of Health and Human Services web site poses the question to the public: “What do I do if I suspect child abuse or neglect?” The answer: “NH Law requires any person who suspects that a child under age 18 has been abused or neglected must report that suspicion immediately to DCYF.” Put otherwise, abuse cases (and the responsibility for protecting abused children) are channelled to DCYF from reporters like nurses, doctors, neighbors, school guidance counselors, the police, clergy and others. Mandatory reporting and the balance of the network of child protection statutes creates a “special relationship” and therefore liability.

The imposition of liability provides compensation to the child harmed by the Department’s neglect of duty. Perhaps most important, liability also imposes a cost on negligent behavior. So, while taxpayers do not have to stand to have the courts address perceived deficiencies in the funding of DCYF, one can hope that a similar message can be conveyed by the tort system. Liability should provide one more reason among many for the legislature to fund fully the State’s efforts to protect the community’s most vulnerable.


Issues in Advanced Personal Injury Litigation
5/9/2019 – 360 NHMCLE min. incl. 60 ethics/prof. min.
This program is designed for litigators who practice personal injury law. The program focuses on important and complex issues that often arise in these cases and with which many personal injury lawyers have little or no experience or confidence. The program is NOT a basic introductory type course, but rather an opportunity for practitioners who handle a variety of personal injury matters to learn how to identify and handle critical issues and problems.

Persuasive Direct Examination
8/1/2019 – 57 NHMCLE min.
The speaker will discuss techniques learned from personal injury cases on how to prepare clients for a persuasive direct examination and how to present in a compelling way to a jury.

Traps for the Unwary: Automobile Accidents
6/2/2021 – 60 NHMCLE min.
This session provides an overview of the different types of injury claims that can be made if a person is injured in a car accident, and the regulations that go along with making each type of injury claim.

A Fair Appraisal: Determining Value of a Workers’ Comp Claim
12/2/2020 – 60 NHMCLE min.
This program breaks down the various factors that determine if there is a workers’ comp claim and the value of it.

Effects of COVID-19 in Workers’ Compensation
5/22/2020 – 60 NHMCLE min.
This program reviews the effects of COVID-19 in the workers’ compensation system.

Traps for the Unwary: Workers’ Compensation
6/16/2021 – 60 NHMCLE min.
This Worker’s Compensation session provides a brief overview of worker’s compensation practice in New Hampshire. It covers a summary of the standards for Workers’ Compensation benefits and issues that arise in Worker’s Compensation hearings.

Workers’ Compensation
11/13/2020 – 360 NHMCLE min. incl. 60 ethics/prof. min.
This program offers input from experienced claimants and defense counsel on workers’ compensation issues.

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Individuals from page 34

or negligent entrustment for a policy that clearly covers negligent acts, the claim may still be precluded. For example, in Philbrick v. Liberty Mut. Fire Ins. Co., 156 N.H. 389 (2007) the Philbricks had filed negligence claims against the Carriers alleging the Carriers’ minor son molested the Philbricks’ children while babysitting. Liberty Mutual asserted that a clause which excluded coverage for damages arising from sexual molestation applied. The Philbricks argued that it was the Carriers’ negligence that caused the children’s injuries, rendering the exclusion inapplicable. The Court disagreed, finding the exclusion applied. Although there are many potential civil causes of action which can be pursued following a sexual assault, if you represent a victim you need to carefully consider and, when possible, review any insurance policies in potential play. How you plead a claim could make the difference between coverage or exclusion. If you are the attorney representing institutional defendants, it may behoove you to discuss insurance options with your clients before a claim for a sexual assault is made. If your client is the type of institution that sends employees into a type of institution that sends employees into any institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institution that sends employees into a type of institutio

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Help Wanted

The Supreme Court Advisory Committee on Rules Welcomes Input on Court Rules

Have you ever prepared for a proceeding in court and thought, “There ought to be a court rule for this?” Or perhaps, “Why the heck was that rule adopted?” Or even, “I could write a better rule than that.” Now’s your chance!

Submit a rule change proposal
Any person or group can suggest a change to court rules by submitting a proposal to the Secretary of the Supreme Court Advisory Committee on Rules. The requirements for submitting a proposal are set forth in Supreme Court Rule 51(c)—briefly, you should:

- Include the text of your suggested rule change,
- The reason why the change should be made, and
- Your name and contact information.

Your suggestion will be reviewed and, in most instances, will be placed on the next agenda for consideration by the committee.

What happens then?
Proposals generally go one of two routes. Technical changes, those that are statutorily required or need expedited review typically get fast-tracked for Supreme Court consideration. Others are given a lengthier review, which may involve refinement and public input. If, after reviewing the content of your proposal and any public comment received, the committee concludes that the change should be adopted, the committee will include that recommendation in its next report to the Supreme Court. Typically, the court will then review the amendments recommended in the committee’s report as well as any public comments before deciding whether to adopt them.

To learn more about the committee’s procedures as set forth in Rule 51, and to see examples of its work, as well as committee reports and public input on various proposed rule amendments go to https://www.courts.state.nh.us/committees/advisory-com/.

Your chance to weigh in
Currently, the court is soliciting comments on several proposed amendments to court rules that were recommended by the committee in its July 1, 2021 report. All proposed amendments can be found in an order issued by the Court on July 15, 2021 at https://www.courts.state.nh.us/supreme/orders/index.htm
In this case, however, the Court found that the doctrine of severability allowed the State to revise the voter registration laws unilaterally by excluding non-citizens from voting. The Court declined to find SB 3 unconstitutional on its face where the law effectively precluded voting found by the trial court. Thus, the Court affirmed the dismissal of Plaintiff’s claims.

The New Hampshire Supreme Court articulated a new standard that actual notice must be given for the full 12-month corrective period for the permanent deprivation of parental rights under RSA 170-C:5, III can begin to run before actual notice was given to a non-acused, non-custodial parent.

The undisputed findings in the record from the court below established that Father was neither directly accused of neglect nor the custodial parent of R.H. Father’s allegations about the prohibition of parental rights were unknown to DCYF. Consequently, Father was not served with the initial neglect petition nor received notice of the adjudicatory hearing before the date of the termination of Father’s paternal rights, the New Hampshire Supreme Court articulated a new standard that actual notice must be given for the full 12-month corrective period for the permanent deprivation of parental rights of a non-acused, non-custodial parent to be constitutionally-adequate.
**Supreme Court Orders**

**REVISIED ORDER**
R-2021-0004, In re July 1, 2021 Report of the Advisory Committee on Rules

The New Hampshire Supreme Court Advisory Committee on Rules (committee) has reported a number of proposed rule amendments to the New Hampshire Supreme Court with a recommendation that they be adopted. On or before September 1, 2021, members of the bench, bar, legislature, executive branch or public may file with the clerk of the supreme court comments on any of the proposed rule amendments. An original and one copy of all comments shall be filed. Comments may also be emailed to the court at: rulescomment@courts.state.nh.us

The language of the proposed rules changes and background regarding the proposals may be found in the July 1, 2021 Advisory Committee on Rules Report, which is available at: courts.state.nh.us/committees/adviscomrules/reports/index.htm

Copies of the July 1, 2021 Advisory Committee on Rules Report are also available upon request to the clerk of the supreme court at the N.H. Supreme Court Building, 1 Charles Doe Drive, Concord, New Hampshire 03301 (Tel. 603-271-2646).

The current rules of the New Hampshire state courts are available on the Internet at: www.courts.state.nh.us/rules/index.htm

The supreme court is requesting comment on recommendations to amend the following rules:

I. **Supreme Court Rule 12-A(1) — Mediation**

This proposal would expand the class of persons who may conduct mediation of cases pending in the supreme court. The language of the proposed rule change is set forth in Appendix A.

II. **Superior Court Rule 12(g) — Motions for Summary Judgment**

This proposal would amend the procedure for filing motions for summary judgment and responses thereto in superior court. The language of the proposed rule change is set forth in Appendix B.

III. **Superior Court Rule 41 — Dismissal of Actions**

This proposal would amend the rule governing the effect of the dismissal of civil actions in superior court. The language of the proposed rule change is set forth in Appendix C.

IV. **District Division Rule 1.27 — Dismissal of Actions**

This proposal would amend the rule governing the effect of the dismissal of civil actions in circuit court — district division.

The language of the proposed rule change is set forth in Appendix D.

V. **Probate Division Rule 172 — Dismissal of Actions**

This proposal would amend the rule governing the effect of the dismissal of civil actions in circuit court — probate division. The language of the proposed rule change is set forth in Appendix E.

VI. **Family Division Rule 1.32 — Dismissal of Actions**

This proposal would amend the rule governing the effect of the dismissal of civil actions in circuit court — family division. The language of the proposed rule change is set forth in Appendix F.

VII. **N.H. Rule of Criminal Procedure 12 — Discovery of Defendant’s Criminal Record**

This proposal would amend N.H. Rule of Criminal Procedure 12 to address the discovery of a defendant’s criminal record prior to arraignment. The language of the proposed rule change is set forth in Appendix G.

Date: July 15, 2021
ATTEST: Timothy A. Gudas, Clerk
Supreme Court of New Hampshire

**At-A-Glance from page 39**

The record is undisputed that Father was absent for the circuit court’s 3-month review hearing, but the record was not clear about whether Father or not Father had actually attended the 6-month review hearing. Father did, however, attend the 9-month review hearing, at which time DCYF was ordered by the circuit court to serve Father all of the orders and petitions in the matter as well as inform Father about his due process rights under the State Constitution, including the right to a full hearing as the non-accused, non-adversarial parent in a RSA chapter 169-C termination proceeding. At the permanency hearing, Father was found not to have maintained consistent contact with R.H. over the preceding 12-month period. The circuit court granted DCYF’s petition terminating Father’s parental rights in a final order. The Supreme Court noted the trial court did not specifically address Father’s lack of actual notice argument in its rulings.

In vacating the termination of Father’s parental rights, the Court required that a circuit court must find that DCYF carried beyond a reasonable doubt the burden of proving that a minimum of 12 months’ actual notice was provided to non-accused, non-custodial parents so that they have an opportunity to correct the conditions of abuse or neglect prior to termination of parental rights. The Court expressed a desire to pass upon questions as to whether constitutionally adequate notice requires any particular content. However, the newly required finding as to the adequacy of notice includes determining whether and when the non-accused, non-custodial parent was provided actual notice of both the abuse or neglect finding and the effect on their parental rights of failing to correct the conditions. The newly articulated high burden of proof reflects the significant process afforded the fundamental right of parenting.

Laura E. B. Lombardi, Senior Assistant Attorney General, for the New Hampshire Division for Children, Youth and Families.

Barbara L. Parker of Newport for Father by brief and orally.

Family Law - Divorce

In the matter of Laura Sandorn and Jeffrey Bart, No. 2020-0080

July 14, 2021

Afwirmed in part, vacated in part, and remanded.

• Whether the trial court erred in ordering automatic modifications of child support based upon future tax returns.

• Whether the trial court erred by adjusting the property distribution to account for one party’s use of marital funds to pay legal fees, but not the other party’s similar expenditures of marital funds on attorney fees.

• Whether the trial court erred by ordering a “slightly uneven” property distribution where Husband had acquired property from his family through inheritance and titled it upon it for his livelihood.

AT-A-GLANCE continued on page 41
Finally, Husband challenged the trial court’s temporary decree, issued after Husband filed his initial appeal, that ordered him to share property taxes on the marital home awarded to Wife. Husband alleged that the trial court lacked the jurisdiction to enter the temporary decree, and the appeal was timely filed because the trial court required the stay of proceedings in order to facilitate the filing of the appeal. Husband also argued that the trial court erred in not evidencing a rebuttable presumption in favor of Wife based on the absence of marital assets that were the basis of his livelihood. The Court found that the bulk of assets were inherited and not Wife’s challenge to the “slightly unbalanced” division of the marital estate was not a basis for reversing the trial court’s decision. Further, as discussed above, the trial court’s temporary decree was not a violation of Husband’s rights to a fair trial or due process in any other manner.

Family Law – Domestic Violence

L.C. v. W.C., No. 2020-0515
July 15, 2021

Affirmed

Whether a final order of protection from domestic violence pursuant to RSA 173-B is sustainable where one of the three incidents upon which the finding was made involved a threat directed toward a relative of the victim.

Plaintiff-wife sought protection from domestic violence based upon conduct on three occasions. First, Defendant-husband sent a text threatening to break her jaw. The second incident involved Defendant-husband preventing her entry from the marital home, bruising her leg by shoving the door and wielding a loaded gun in the home. The third incident involved Defendant-husband pointing a loaded gun at Plaintiff-wife’s apartment while visiting the residence. Plaintiff-wife was absent at the time of the third occasion, but their teenage grandson over whom they had guardianship was present in the home. The unrebuted record before the trial court showed that each of the three incidents occurred while defendant-husband was impaired from excessive alcohol consumption. To obtain protective orders under RSA chapter 173-B, the plaintiff must show abuse or credible threat to safety by a preponderance of the evidence. The trial court found that the defendant committed reckless conduct of the first incident constituted simple assault. The trial court found the second incident constituted reckless conduct of the third incident constituted criminal conduct of the first incident constituted simple assault. The trial court found the second incident constituted reckless conduct of the third incident constituted criminal conduct of the first incident constituted simple assault. The trial court found that the defendant committed reckless conduct of the first incident constituted simple assault. The trial court found the second incident constituted reckless conduct of the third incident constituted criminal conduct of the first incident constituted simple assault.

In this motion, the defendant Imran Alrai moves for a new trial or the dismissal of his charges based on the prosecution’s alleged violations of Brady v. Maryland, 373 U.S. 83 (1963). Alrai was indicted in November 2018 on multiple counts of wire fraud and other crimes. The indictment was based on suspicions that Alrai used his role as Vice President of Information Technology (IT) at United Way of Massachusetts Bay and Merrimack Valley to cause United Way to hire and pay a company with which he had interests and prohibiting him from being within 300 feet of Plaintiff-wife was unnecessary and therefore reversible error. Applying the unsustainable exercise of discretion standard, the Court found the record established an objective basis for ordering those remedies.

New Hampshire Legal Assistance, (Chelia Amanda Rommel and Mary Kruger on the brief, for the plaintiff, impaneled counsel for the plaintiff; Mr. and Mrs. John J. Lapham, for the plaintiff, impaneled counsel for the plaintiff; Mr. and Mrs. John J. Lapham, for the plaintiff, impaneled counsel for the plaintiff; Mr. and Mrs. John J. Lapham, for the plaintiff, impaneled counsel for the plaintiff; Ms. Krueger orally), for the defendant.

In this action for a declaratory judgment of trademark non-infringement and non-dilution, the out-of-state defendant moves for dismissal for lack of personal jurisdiction or, in the alternatives, a transfer of venue to the case. To obtain protective orders under chapter 173-B, the plaintiff must show abuse or credible threat to safety by a preponderance of the evidence. The trial court found that the defendant committed reckless conduct of the first incident constituted simple assault. The trial court found the second incident constituted reckless conduct of the third incident constituted criminal conduct of the first incident constituted simple assault.

In this action for a declaratory judgment of trademark non-infringement and non-dilution, the out-of-state defendant moves for dismissal for lack of personal jurisdiction or, in the alternatives, a transfer of venue to the case. To obtain protective orders under chapter 173-B, the plaintiff must show abuse or credible threat to safety by a preponderance of the evidence. The trial court found that the defendant committed reckless conduct of the first incident constituted simple assault. The trial court found the second incident constituted reckless conduct of the third incident constituted criminal conduct of the first incident constituted simple assault.
NEW! NH Minimum Continuing Legal Education (NHMCLE) Coordinator

The NHMCLE Coordinator is a key member of our Business Operations department. They support the NHMCLE Court Board in administering NH Supreme Court Rule 53. They are the primary contact between the NHMCLE Board and attorneys practicing in the State of New Hampshire. Strong technical abilities to manage the Attorney Reporting Tool and database along with preparing documents for audit of education credits and assisting NH attorneys with Rule 53 compliance.

NEW! NHBA Website Coordinator

The Website Coordinator is a key member of NHBA’s Marketing, Communications and Member Outreach Department. They have primary responsibility for the architecture and content of NHBA’s website, including ongoing changes and updates. They are also responsible for website-related aspects of NHBA’s virtual events.

NHBA Lawyer Referral Service Coordinator

The Lawyer Referral Service Coordinator is a key member of NHBA’s Marketing, Communications and Member Outreach Department. This position coordinates a variety of legal access programs for the NHBA including the Lawyer Referral Service (Full Fee and Modest Means), LawLine, and Free Legal Answers-NH programs. This position’s daily activities include interfacing with the public, recruiting, and supporting NHBA members within these programs and overseeing the programs’ support staff.

NHBA Lawyer Referral Service Intake and Referral Specialist

The Lawyer Referral Service Intake and Referral Specialist is a key member of NHBA’s Marketing, Communications and Member Outreach Department. They provide client intake and attorney referral for NHBA’s Lawyer Referral Service (LRS) call center, as well as clerical and other tasks supporting the Full-Fee and Modest Means programs. At least 66% of time is spent on phone receiving referral requests. They also provide administrative support for Free Legal Answers-NH and LawLine programs.

See complete listings for these and other positions at nhbar.org/about-the-bar/nhba-careers/

All positions are 100% in-office.

NEW HAMPSHIRE BAR ASSOCIATION

Equal Justice Under Law

2 Pillsbury St, Suite 300, Concord, NH 00031
(603) 603-224-6942  • nhbar.org

The NHBA supports members of the legal profession and their service to the justice system. We are an equal opportunity employer.
NEW HAMPSHIRE BAR NEWS

ASSOCIATE ATTORNEY WANTED. Hayes, Windish & Badgewick is seeking an associate to join our team. Preference is given to those with 3-5 years’ experience in civil litigation, but those just starting with strong work ethic and motivation will be considered too. We are a small general practice firm with an emphasis on civil litigation, insurance defense, and workers’ compensation matters. We seek a candidate who is interested in high ethical standards, strong skills in research and writing, along with an enjoyment of litigation. Please have a desire to learn the profession. Competitive pay and benefits offered. Position to remain open until filled. Please send your resume and cover letter to: Paul Alfano at paul@steinlawpllc.com. Please note: Women and minorities are encouraged to apply.

ASSOCIATE – General Practice New Hampshire Seasonal firm, with emphasis on litigation and corporate counseling, seeks an associate licensed in New Hampshire. Candidate must be detail oriented, organized, self-motivated and willing to work in all areas of the law. All replies are confidential. Salary commensurate with experience. Qualified candidates should forward a resume, cover letter and references to: Kari & LaCount, 881 Wall Street, Rye, NH 03870 or biring@law.com.

BUTENHOF & BOMSTER

Real Estate Attorney

A small, downtown Manchester firm is seeking an attorney with 1-3 years of litigation experience. Family Law attorney to join our law firm. Competitive salary and benefits. Interested applicants can submit their resume to ads@law.com.

AUGUST 18, 2021

ASSOCIATION – General Practice New Hampshire Seasonal firm

ASSOCIATE – General Practice New Hampshire Seasonal firm, with emphasis on litigation and corporate counseling, seeks an associate licensed in New Hampshire. Candidate must be detail oriented, organized, self-motivated and willing to work in all areas of the law. All replies are confidential. Salary commensurate with experience. Qualified candidates should forward a resume, cover letter and references to: Kari & LaCount, 881 Wall Street, Rye, NH 03870 or biring@law.com.

CLASSIFIEDS continued on page 44

CLERK

The New Hampshire Department of Revenue Administration seeks an experienced administrative clerk to serve in the role of Tax Policy Counsel. The successful candidate will work closely with the Department’s liaison with the New Hampshire General Council by communicating agency objectives and initiatives to the legislative body as well as responding to legislative inquiry on matters relating to tax law, tax policy, tax administration, fiscal impact, revenues, and budgets. The candidate will also work with the New Hampshire state and federal laws and legislative proposals in order to advise the Department on the impact to agency operations and to the Commissioners of agency changes required. The candidate will also manage the agency’s administrative rulemaking process and will serve as the agency’s public information officer by coordinating communications with the agency and responding to press inquiries. A more detailed description of job duties can be found here: https://www.revenue.nh.gov/career/documents/TaxPolicyCounselLongAd.pdf

Minimum Qualifications:

EDUCATION: Juris Doctorate from a recognized college or university.

EXPERIENCE: Four or more years' experience in legal practice, legal or legislative research, or related experience. Each general year of approved work experience may be substituted for one year of required formal education at the grades or level cited above.

Interested candidates can submit letter of interest to the Commissioner of Revenue Administration, Carolyn L. Lear, NH DRA, 109 Pleasant Street, PO Box 457, Concord, NH 03302 or by e-mail to Carolyn.L.Lear@dra.nh.gov.

LITIGATION PARALEGAL

We are a growing Manchester family law firm that offers attorneys competitive compensation and benefits package, control to grow your own caseload, and flexibility in your schedule. SekelaLaw, PLLC is known and respected in the family law legal community, and for treating its clients with care, compassion and open communication. We believe that it is vital to establish a work/life balance for all who work here. We are looking for an attorney who wants to grow their practice and down the road, become independent in the family law field with a recognized firm. SekelaLaw, PLLC offers a competitive compensation and benefits package. We also provide a friendly and supportive team-based work environment, an opportunity to grow your caseload and achieve autonomy in your schedule and ultimately your practice. Our ideal candidate has experience and motivation to work in family law, not afraid of a challenge, engages with people and co-workers and possesses exceptional writing and communication skills. Benefits include health, dental, vision, 401k, profit sharing, performance based bonuses and flex-time. A minimum of 3 years in practice, with a focus of at least 1 year in family law is required. Send resume and cover letter describing why you believe you are the ideal candidate and your salary requirements to: heather@sekelalaw.com.
Business Law Attorney

Shaheen & Gordon, P.A. has an immediate opening for an attorney with 7-12 years of experience to join our Business Practice Group. We are looking for a person with experience, motivation, sense of humor and a willingness to take on a leadership role. As a partner, we place a high value on teamwork, collaboration, intellectual openness, and the robust exchange of views.

We seek an energetic person with broad experience and a cooperative spirit. Ideal candidates will have experience in transactional law including general corporate representation, mergers and acquisitions, employment, securities law, real estate, municipal representation, and health care law. Our goal is to find someone who is willing to support our varied business client needs while building a practice in the areas that excite them.

Business Law Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney with 0-3 years of experience in the Business Practice Group. We welcome lawyers with diverse backgrounds looking to launch and build their careers in an entrepreneurial environment. We are looking for exceptional candidates with energy, curiosity, humor, integrity, and the motivation to succeed. As a firm, we place a high value on teamwork, collaboration, intellectual openness and the robust exchange of views.

Associates will have the opportunity to work on a variety of cases and issues in a sophisticated business law practice, including business litigation, general corporate representation, mergers and acquisitions, real estate, municipal representation and health care law. In addition to research and writing, new lawyers are encouraged to work directly with clients, develop practical skills under the tutelage of experienced and expert lawyers in the firm, and cultivate their own particular areas of interest and focus.

Family Law Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney with 0-3 years of experience in the Family Law Department in our Concord, New Hampshire office. We welcome lawyers with diverse backgrounds looking to launch and build their careers in an entrepreneurial environment. We are looking for exceptional candidates with energy, curiosity, humor, integrity, and the motivation to succeed. As a firm, we place a high value on teamwork, collaboration, hard work, intellectual openness and respectful communication.

Associates will have the opportunity to work on a variety of cases and issues in a sophisticated family law practice, including divorce cases for middle income to high-net-worth clients. Collaborative Divorce cases, the identification and distribution of trust interests in divorce, valuation and division of business interests, interstate and international jurisdictional issues, child support and alimony, unwed parenting cases, and guardianships. Our clients include women, men, fathers, and mothers; cisgender, transgender, and non-binary individuals; and individuals in same-sex and opposite-sex marriages.

In addition to research and writing, new lawyers are encouraged to work directly with clients, develop practical skills under the tutelage of experienced and expert lawyers in the firm, and cultivate their own particular areas of interest and focus.

Shaheen & Gordon is committed to creating a diverse environment and is proud to be an equal opportunity employer. We do not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in all aspects of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff. Shaheen & Gordon is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in all aspects of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff.

We offer a competitive salary and a generous benefits package including health insurance, flexible spending account, health reimbursement, long term disability, paid time off, paid parental leave, life insurance and 401(k) with employer match. Although we value the opportunities for collaboration and learning that come with in-person contact, we are open to discussing flexible work arrangements.

Interested applicants please forward your resume, a cover letter, and a writing sample to recruiting@shaheengordon.com.

Paralegal

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a Paralegal with strong personal injury and medical malpractice experience in State Court in their Manchester, NH office. The ideal candidate will have at least three (3) to five (5) years’ experience. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently. As to the Responsibilities below, some on-the-job training will be provided.

Responsibilities to include, but are not limited to:
• Must have strong computer skills (programs used by the office: Microsoft Office, Outlook, Excel, Adobe, Centerbase, NetDocuments), scanning and maintaining electronic files
• Must have excellent communication skills via email, phone, and with clients, court staff and opposing counsel
• Must be highly organized with an ability to prepare case files for attorneys to use at court hearings
• Experience with contacting claims adjusters
• Experience with requesting, reviewing and organization of medical records and bills
• Preparing medical evidence for trial
• Management of Personal Injury Files
• Management of Medical Malpractice Files
• Preparation of general correspondence, motions and objections
• Preparation of Demand letters

Shaheen & Gordon is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in all aspects of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff.

We seek an energetic person with broad experience and a cooperative spirit. Ideal candidates will have experience in transactional law including general corporate representation, mergers and acquisitions, employment, securities law, real estate, municipal representation, and health care law. Our goal is to find someone who is willing to support our varied business client needs while building a practice in the areas that excite them.

Experience is required.

Shaheen & Gordon presents a pleasant, supportive, challenging, non-smoking work environment. Salary commensurate with experience, with excellent benefits including health insurance, flexible spending account, and 401(k) plan employer match. Please submit your cover letter and resume to recruiting@shaheengordon.com.

No phone calls or agencies please.

Personal Injury Legal Assistant

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a Personal Injury Legal Assistant responsible for supporting trial attorneys in State and Federal Court in their Dover, NH office. The ideal candidate will have at least 3 to 5 years’ experience. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently.

Responsibilities to include, but are not limited to:
• Preparation of general correspondence
• Preparation of Motions and Objections
• Requesting Medical Records
• Organization and review of Medical Records
• Have solid knowledge of Court Rules and all discovery deadlines
• Have NH Superior Court and U.S. District Court filing experience
• Strong computer skills, Microsoft Office, Outlook, Excel, Adobe, Centerbase, NetDocuments, scanning and maintaining electronic files
• Must have excellent communication skills via email, phone, and with clients, court staff and opposing counsel
• Must be highly organized with an ability to prepare case files for attorneys to use at court hearings

In addition, excellent secretarial skills, the ability to multi-task and work independently and under pressure, communicate clearly, as well as being organized and able to prioritize is required. Attention to detail and proofreading skills are a must have. We look forward to welcoming someone who takes pride in their work, is enthusiastic, flexible and who will thrive in a fast-paced environment. Experience is required.

Shaheen & Gordon is an Equal Opportunity Employer and does not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in all aspects of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff.

Shaheen & Gordon presents a pleasant, supportive, challenging, non-smoking work environment. Salary commensurate with experience, with excellent benefits including health insurance, flexible spending account, and 401(k) plan employer match. Please submit your cover letter and resume to recruiting@shaheengordon.com.

No phone calls or agencies please.

EOE
**ACCOUNTS PAYABLE**

FULL-TIME

Shaheen & Gordon, P.A., Attorneys at Law, is adding to their team of professionals and is seeking a full-time experienced Accounts Payable professional in the Dover, NH office. This position performs accounts payable functions, working closely with the Sr. Accountant and Accounting Manager, as well as working closely with the Billing Specialist on some accounts receivable functions along with a variety of general accounting support tasks in an accounting department. To be successful in this role the candidate must demonstrate the ability to multi-task, in a fast paced environment and work as a member of a team, in addition to working independently.

**Responsibilities:**
- Verifying the accuracy of vendor invoices, check requests, petty cash receipts and other accounting documents or records
- Update and maintain accounting journals, ledgers and other records detailing financial business transactions (e.g., disbursements, expense vouchers, receipts, accounts payable) into computer system using defined computer programs on a daily basis
- Compile data and prepare a variety of reports as needed
- Reconciles records with internal company employees and management, or external vendors or clients
- Assist billing with monthly invoicing, collection calls and monitoring AR along with preparing reconciliations
- Other accounting functions/projects as assigned

**Qualifications:**
- Proven working experience as an Accounts Payable professional with 2 to 5 years relevant experience
- Ability to work in a high-paced and at times stressful environment, as well as being able to work independently
- Excellent verbal and written communication skills
- Computer literacy with Microsoft Office Suite

**Salary commensurate with experience, with excellent benefits package.**

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**TRUST & ESTATE PARALEGAL**

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time Paralegal professional with 5 to 10 years’ experience to work in the firm’s Family Law Department in their Dover, NH office. Must have NH experience, specifically in Family Law. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently.

**Responsibilities:**
- Management of Marital Files
- Drafts legal documents including request correspondence, pleadings and motions, affidavits, interrogatories, request for production of documents, mandatory disclosures and the like
- Prepares and organizes discovery, exhibits, and depositions
- Assists attorneys with trial preparation
- Daily communications with clients and opposing counsel via phone and email
- Rubs solid knowledge of Court Rules and all discovery deadlines
- Performs other clerical duties such as scheduling appointments, providing information to callers, reading and routing incoming mail
- Accurate filing and copying
- Conflict checks
- Perform other related duties as assigned

**Required Skills/Abilities:**
- Excellent verbal and written communication skills
- Excellent understanding of legal language, court pleadings and processes
- Excellent organizational skills, attention to detail and be able to multi-task
- Strong analytical and problem-solving skills
- Ability to work in a high-paced and at times stressful environment, as well as being able to work independently
- Maintain confidentiality
- Must be proficient in Microsoft Word/Outlook, Excel with the ability to adapt to new software programs and specifically NetDocuments and Centerbase

We look forward to welcoming someone who takes pride in their work, is enthusiastic and flexible and who will thrive in a fast-paced environment. Experience is required.

Shaheen & Gordon is an Equal Opportunity employer and does not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in all aspects of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff.

**Salary commensurate with experience, with excellent benefits package.**

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**ATTORNEY OPENINGS**

Sulloway & Hollis, PLLC, continues to grow its regional practice, with opportunities for talented associates with three to five years’ experience to join our Trust and Estate, Labor and Employment and Medical Malpractice practice areas. We offer a dynamic and so-phisticated practice, a collegial and flexible working environment, and support to our attorneys with mentoring and business development, together with a competitive compensation package and excellent benefits. Current openings include:

**Trusts & Estates**

At our Firm, we assist clients with the important decisions involved in protecting their families and preparing for the future. We are seeking Associate Attorney level candidates for our Concord, NH location. Our attorneys handle all aspects of estate planning and trust and estate administration, as well as the federal estate and gift taxation issues that go along with these areas.

**Labor & Employment**

Employment relationships are subject to a complex web of changing state and federal regulations, and navigating this critical area of law requires an experienced, proactive approach. Sulloway’s Labor and Employment Practice Group provides comprehensive counseling and litigation services to employers across New England. We are seeking Associate Attorney level candidates for our Concord, NH location. Candidates should have exceptional research and writing skills, and a passion for advocacy.

**Medical Malpractice**

For more than a half-century, our Firm has been a leader in medical malpractice defense, hospital and physician advocacy, and health care litigation. Our lead attorneys in this area have decades of experience representing hospitals, physicians, professional practice groups and other health care providers and medical institutions across New England. We are seeking Associate Attorney level candidates to join our team in our Concord, NH location.

Qualified applicants should submit resume and cover letter to: Jennifer L. Iacopino, Human Resources Manager, jiacopino@sulloway.com

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**Family Law Attorney – New Hampshire**

Orr & Reno PA is seeking an experienced (3-5 years) Family Law attorney to join our growing law firm. Qualified candidates will be energetic and self-motivated, possess superior academic credentials, have good communication, writing and advocacy skills and a demonstrated commitment to living and practicing in New Hampshire.

Orr & Reno offers a collegial and team-oriented working environment along with a competitive salary and benefits package, which includes medical, dental, life, 401(k), paid vacation, holidays, and sick leave.

Please submit a cover letter, resume, transcript and writing sample to:

Orr & Reno, PA

Attention: HR Coordinator

PO Box 3550

Concord, NH 03302-3550

Fax: (603) 223-9060

Email: resumes@orr-reno.com (Word format)

No phone calls or agencies please.
**Business Attorney**

Seeking experienced Business Attorney to join thriving Corporate and Commercial practice with a mid-sized, 100-year-old, firm located in the heart of the Lakes Region in New Hampshire. Ideal candidate will have a minimum of 3-5 years corporate experience and an interest in building a long-term career in the Lakes Region. Commercial and/or residential Real Estate experience a plus.

Candidate must be extremely organized, able to work independently and have strong written and oral communication skills. We look forward to welcoming an attorney who is committed to excellence in his or her practice and dedicated to client service. This is an outstanding opportunity for an experienced lawyer to grow his or her career and practice in a friendly, supportive environment with experienced attorneys and an established corporate client base.

Please forward resume and letter of interest to:

Normandin, Cheney & O’Neil, PLLC  
P.O. Box 575, Laconia, NH 03247-0575  
email to Atty. Karinl O’Neil, at koneli@nco-law.com

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**Attorney - Corporate Practice Group**

Do you like working with entrepreneurs? Are you interested in joining a collaborative and innovative legal practice? Cook, Little, Rosenblatt & Manson, p.l.l.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 2-4 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

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**Children’s Behavioral Health Policy Coordinator**

New Futures, New Hampshire’s leading health policy and advocacy organization, is seeking an innovative and detail-oriented Policy Coordinator to lead its children’s behavioral health policy work. The Children’s Behavioral Health Policy Coordinator will work with New Futures’ Policy and Community Engagement staff to develop and implement a comprehensive legislative and advocacy strategy to achieve identified policy goals.

The individual in this position must be entrepreneurial, possess demonstrated experience across a range of fields including program planning and coalition engagement, and must be able to work as part of a team. The Children’s Behavioral Health Coordinator will be responsible for researching, developing and executing legislative strategies. The ideal candidate will have experience in health policy and the political dynamics in New Hampshire. The Children’s Behavioral Health Policy Coordinator will work collaboratively with New Futures’ policy, communications and engagement staff, strategic consultants and others to help advance New Futures’ policy goals.

**Primary Duties and Responsibilities:**

- Convene and collaborate with stakeholders in the children’s behavioral health field, contracted partners, and New Futures staff to seek agreement on policy priorities, and to develop and implement a comprehensive legislative and advocacy strategy to achieve those priorities.
- Support research, analysis, communications, and advocacy efforts towards achievement of children’s behavioral health policy goals and objectives;
- Track, analyze, and synthesize policy, legislative proposals, best practices, and research related to children’s behavioral health policy issues;
- Support policies and strategies to expand the array of available services for children with behavioral health conditions in New Hampshire, consistent with System of Care values;
- Assist in information gathering and analysis; conduct literature reviews and research using academic, on-line and other resources;
- Assist with producing and distributing policy fact sheets, briefs and communications materials, preparing presentations, drafting advocacy messages;
- Represent the organization effectively before legislative committees, at stakeholder meetings, and build strong relationships with aligned partner organizations;
- With New Futures’ Community Engagement staff, develop and deliver legislative strategy and advocacy trainings to advocates and partners;
- Provide additional assistance as needed to support the communications, development, research, and administrative needs of other New Futures’ staff;
- Frequent in-state travel and some out-of-state travel required (as needed).

**Qualifications:**

This position requires a minimum of two years work experience in law, public policy, health care, social services or other related fields, with demonstrated project management experience. You must possess a master’s degree, or higher, in Law, Public Policy, Political Science, Public Administration or related fields from a recognized college or university. Additional years of professional work experience in public policy may be substituted for advanced educational requirements, provided the applicant possesses a minimum of a bachelor’s degree.

This position requires strong leadership and project management skills, plus the ability to work as part of a team.

- Demonstrated high-level skill and effectiveness at research, policy analysis, advocacy, and project management;
- Deep understanding of government procedure including, legislative process and administrative rulemaking;
- Demonstrated commitment to valuing diversity and contributing to an inclusive working and learning environment;
- Strong organizational and administrative competency;
- Leadership and facilitation skills, including conflict and group management;
- Exceptional writing and editing skills;
- Exceptional oral communication skills, including public speaking experience;
- Strong analytical skills, and experience applying them to legislative, and/or budget projects;
- Familiarity with Medicaid, child development, brain science and/or children’s behavioral health policies and programs;
- Demonstrated experience in effective internal and external communication, collaboration, and coordination with individuals and organizations;
- Demonstrated high-level skill and effectiveness at research, policy analysis, advocacy, and project management;
- Excellent attention to detail;
- Ability to develop strong and effective working relationships with diverse and multicultural constituencies including New Futures staff, policymakers, and others;
- Knowledge of MS Office with strong word processing, Excel, database, social media platforms; and academic, on-line and other resources;
- Strong internet research skills.

**HOURS:** This is a full-time, salaried, exempt position at 37.5 hours per week.

**Compensation & Benefits:** New Futures offers competitive benefits including: health and dental coverage; life insurance and long term disability; FSAs and dependent care FSAs; paid family medical leave; paid time off for individual holidays, sick and vacation; cell phone reimbursement; remote work coverage; life insurance and long term disability; FSAs and dependent care FSAs; paid family medical leave, company matching 401K, tuition reimbursement, employee stock purchase plan and additional site specific perks (on site gym, yoga classes, personal trainer and more).

**APPLICATION PROCESS:** To Apply: Please email a cover letter and resume to April Axel, New Futures’ Vice President of Finance and Operations, at the following address – aarel@new-futures.org. E-mail applications with attachments in Microsoft Word or PDF format only. We do not accept phone inquiries regarding the position; please do not call. Position will be open until filled.
Upton & Hatfield LLP
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Since 1908, Upton & Hatfield has provided legal services to New Hampshire people, businesses, and municipalities. Our firm serves the state from offices in Concord, Portsmouth, Hillsborough, and Peterborough. We are growing and seeking candidates for the following positions:

ATTORNEY with 3+ years’ experience for its Peterborough office to focus on estate planning, probate and trust administration, business transactions, and real estate, and to become involved in the communities in the Monadnock Region.

ATTORNEY with 3+ years’ experience for its Concord office to focus on business and real estate transactions and to become part of the Concord business community.

PROBATE PARALEGALS with 5+ years’ experience to assist with trust/probate administration, probate filings, and trust and estate account administration, including statement reconciliations, financial reporting, and preparation of tax information for outside tax preparers. Bookkeeping experience is a plus.

Upton & Hatfield offers a competitive compensation and benefit package. Please forward a cover letter and resume to Pamela Woodworth, Administrator, Upton & Hatfield, PO Box 1090, Concord, NH 03302-1090, or via email to hr@uptonhatfield.com. All inquiries will be held in strict confidence.

DCYF – Attorney II
NH Department of Health & Human Services
Position Number #44380 – Manchester District Office

Salary Range: $57,954.00 to $82,894.50

The N.H. Department of Health and Human Services, under the supervision of the N.H. Department of Justice, currently has an attorney position available representing the Division for Children Youth and Families. This position is located in the Manchester District Office.

Duties include: Representation of the Division for Children, Youth and Families in litigation involving the Division’s child protection program. Litigation activities include drafting pleadings and motions, conducting discovery, legal research and writing, preparing witnesses for trial, negotiating settlements, and presenting evidence and oral argument at court hearings and trials.

Requirements: J.D. from a recognized law school, N.H. Bar membership, a driver’s license and/or access to transportation for statewide travel and four years’ experience in the practice of law, preferably in the area of abuse and neglect or family law.

How to APPLY: Please go to the following website to submit your application electronically through NH 1st: http://das.nh.gov/jobsearch/employment.aspx. A paper application may be sent to: New Hampshire Dept. of Health and Human Services, 129 Pleasant Street, Concord, NH 03301. Please reference the position number that you are applying for:

#44380 Attorney II. Position will remain open until a qualified candidate is found. EOE.

For questions about this position please contact Attorney Deanna Baker, Legal Director at (603) 271-1220.
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